471.

SUPREME COURT OF THE UNITED STATES.

No. 141.

WILLIAM H. AND CHARLES BELCHER, PLAINTIFFS IN ERROR,

vs.

WILLIAM A. LINN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MISSOURI.

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Style.

Pleas held before the Honorable Robert W. Wells, district judge of the United States for the district of Missouri, and one of the judges of the circuit court of the United States for the district of Missouri, on the fifteenth day of November, in the year of our Lord one thousand eight hundred and fifty-six.

WILLIAM H. BELCHER and CHARLES BELCHER, partners in trade doing business under the name and style of Belcher & Brother, Plaintiffs, vs. WILLIAM A. LINN, Defendant. } Case.

Be it remembered, that heretofore, to wit, on the fifteenth day of September, in the year of our Lord one thousand eight hundred and fifty-four, came the plaintiffs by Shepley and Kasson, their attorneys, and filed in the office of the clerk of the circuit court of the United States for Missouri district their declaration against the defendant in manner and form, words and figures following, viz:

Decl.

William H. Belcher and Charles Belcher, partners in trade doing business under the name and style of Belcher & Brother, complain of William A. Linn, surveyor and inspector, acting as collector of the United States of America for the port of St. Louis, district of New Orleans, of a plea of trespass on the case upon promises: for that whereas the said defendant heretofore, to wit, on the first day of July, eighteen hundred and fifty-four, at the district of Missouri aforesaid, was indebted unto said plaintiffs in the sum of eight thousand dollars of lawful money by the defendant, before that time had and received to and for the use of said plaintiffs. The said money having been received by said defendant, acting as collector of the said United States for said port of St. Louis, and being so indebted in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook, and then and there faithfully promised the said plaintiffs to pay them the said sum of money when he should be thereunto afterwards requested.

And for that whereas, also, the said defendant heretofore, to wit, on the day and year aforesaid, at the district aforesaid, was indebted unto the said plaintiffs in the further sum of eight thou-

said dollars of lawful money by the said defendant, before that time had and received to and for the use of said plaintiffs; and being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook, and then and there faithfully promised said plaintiffs to pay them the said sum of money when he should be thereunto afterwards requested.

Yet the said defendant, although often requested so to do, has not as yet paid said several sums of money above mentioned, or either or any part of either of them, but to do so has refused and still refuses, to the damage of said plaintiffs of eight thousand dollars, and therefore they bring their suit, &c.

J. R. SHEPLEY,
J. A. KASSON,
Att'ys for Pl'ffs.

Summons.

And afterwards, to wit, on the 15th day of September, 1854, a summons, as follows, was issued on said declaration:

MISSOURI DISTRICT, *set.*

The President of the United States to the Marshal of the Missouri district, greeting:

You are hereby commanded to summon William A. Linn, a citizen of the State of Missouri, that he be and appear before the honorable circuit court of the United States for the district of Missouri, on the first day of the next term thereof, to be holden at the city of St. Louis, in and for said district, on the first Monday of October next, then and there to answer unto William H. Belcher and Charles Belcher, partners in trade doing business under the name and style of Belcher & Brother, in a plea of trespass on the case upon promises, to the damage of said plaintiffs eight thousand dollars. Hereof fail not, and have you then there this writ.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, the fifteenth day of September, A. D. eighteen hundred and fifty-four.

Issued at office, in the city of St. Louis, under the seal of said [SEAL.] court, the day and year last aforesaid.

BEN. F. HICKMAN, *Clerk.*

And on said summons is endorsed a return in the words following:

I certify that I executed the within writ by offering to read the same, together with the copy of the declaration hereto attached, to and within the hearing of the said William A. Linn, but he declined and refused to hear the same, and acknowledged service

thereof, on this 15th September, 1584, in the city of St. Louis, Mo.

THOMAS S. BRYANT,
U. S. Marshal, Mo. Dist., by R. K. MOORE, *Dept.*

And afterward, on the 7th of October, 1854, at a circuit court of the United States for Mo. dist., for October term, 1854, was had the following proceeding:

WILLIAM H. BELCHER, &c.
vs.
WILLIAM A. LINN. } Assumpsit.

This day came the parties, by their attorneys, and the plaintiffs by consent file an additional count to their declaration* herein, and also file a bill of particulars, and by further consent time is allowed the defendant until the first Monday in December next to file pleas in this case.

NOTE. The bill of particulars called for above is as follows:

In the Circuit Court of United States for Missouri district.

DISTRICT OF MISSOURI, *ss.*

WILLIAM H. BELCHER and CHARLES BELCHER
vs.
WILLIAM A. LINN.

And now come the said plaintiffs, and for a bill of particulars of the demand of said plaintiffs file the following:

WILLIAM A. LINN

To BELCHER & BRO.....DR.

To amount of duties illegally exacted of plaintiffs, paid by them under protest on the value of barrels which were shipped by plaintiffs out of the United States, and were brought back to the United States, which barrels were of American growth and manufacture, and on which no allowance bounty or drawback had been allowed, which barrels were brought back into the United States by the vessels and at the time as below specified.

Time when duties paid.	
Octo. 21, 1853.	394 barrels brought by brig Rainbow, entered at New Orleans May 2d, 1853.
Oct. 21, 1853.	1,152 barrels brought by bark Alnah, entered at New Orleans May 9th, 1853.

*For the additional count called for here, see page 8 of this transcript. It was omitted here by mistake.

Account—Continued.

Time when duties paid.		
Nov. 19, 1853.	788 barrels brought by brig Rainbow, entered at New Orleans Jan'y 29, 1853.	
Jan'y 28, 1854.	1,170 barrels brought by brig Crocus, ent'd at New Orleans Sept. 12, 1853.	
March 17, 1854.	206 barrels brought by sch. Chas. Henry, ent'd at New Orleans May 10, 1853.	
March 17, 1854.	1,200 barrels brought by b'que Catharine, ent'd at New Orleans May 18, 1853.	
March 17, 1854.	1,225 barrels brought in brig Emetine, entered at New Orleans June 6, 1853.	
Ap'l 21, 1854.	425 barrels brought in brig Crocus, entered at New Orleans May 18, 1853.	
Ap'l 21, 1854.	1,969 barrels brought in b'k Franklin, entered at New Orleans May 19, 1853.	
Ap'l 25, 1854.	1,035 barrels brought in b'g John Dutton, entered at New Orleans June 6, 1853.	
	In all 9,584 barrels, which were valued at $1 50 each, making the sum of.....	$14,376
	Commissions at 2½....	354 40
	In all.....	14,735 40

The duty of 30 per cent. illegally charged and collected on which amount would be..... $4,420 62

By last six vessels were also imported and entered as above the following packages, containing sugar and molasses, to wit:

102 hogsheads by sch. Chas. Henry.
128 " " Catharine.

197 hogsheads by sch. Crocus, May 18.

497 " in all, which valued at $5 each would make sum of.....	$2,885	
Add commission, 2½ per cent.....	62	12
Valuation in all.....	$2,547	12
The duty of 30 per cent. illegally charged and collected on which would be the sum of.....		$764 13
		$5,184 75

And afterwards, viz: at the October term of the said court for the year 1854, was had the following proceeding:

WILLIAM H. BELCHER & Co. vs. WILLIAM A. LINN. } Assumpsit.

This day come the parties, by their attorneys, and by consent in writing filed in this cause, it is ordered that letters rogatory, according to the form and practice of the civil law, be issued in this case, directed to any judge or tribunal in the island of Cuba, having jurisdiction of civil causes, requesting such judge or tribunal that they will, by the proper and usual process of their court or office, cause such witness or witnesses as shall be named or pointed out to them by the said parties, or either of them, or their respective agents, to appear before them, or some competent person by them for that purpose to be appointed and authorized, at a precise time and place by them to be fixed, and there to answer on their oaths or affirmations to the several interrogatories thereto annexed, and that they will cause said depositions to be committed to writing, and returned to this court under cover, duly closed and sealed up, together with said letters. And it is further ordered that such interrogatories as the parties may agree upon and settle in vacation be annexed to said letters before their transmission, and that the notice of taking evidence under said letters be given as stipulated in the aforesaid agreement of parties, and saving to the said parties all the exceptions and savings in said argument set forth.

And afterwards, to wit, at the October term of the United States circuit court for Missouri district for the year 1856, on the 10th November, 1856, was had the following proceeding:

WILLIAM H. BELCHER & Co. vs. WILLIAM A. LINN. } Case.

This day come the parties, by their attorneys, and by consent,

and with the leave of the court, the plaintiffs file an amended bill of particulars herein, and, by further consent, the defendant now files herein his plea of non-assumpsit to the declaration and amended declaration of plaintiffs, to which plea the plaintiffs file joinder.

NOTE.—The additional count called for on page 4, and there omitted, is as follows:

Also for that whereas heretofore, to wit, at the day and year aforesaid, in the said district of Missouri, and for a long time before and since, the plaintiffs were, and still are, citizens of the United States of America, and residents in said district, and manufacturers of sugars and molasses, and also of barrels, casks, and other materials useful to and connected with said business, and were also owners of sugars and molasses at Matanzas, in the island of Cuba, one of the dominions of the Queen of Spain, and were importers thence into the United States of sugars, molasses, concentrated molasses, and unpurged and partially purged sugars, being of their own property in said island of Cuba, which their said property in Cuba they wished to transport to the United States, to wit, into said district of Missouri, from said port of Matanzas. The plaintiffs aver that they, for the purpose aforesaid of transporting from said Matanzas into the United States their said sugars and molasses, sent from the United States, (to wit) from said port of St. Louis, 497 hogsheads and 9,585 empty barrels, which were wholly and in every part the product and manufacture of said United States, (to wit) at said district of Missouri, and these manufactured by the plaintiffs in the usual course of their said business in the United States, and then were, and always continued to be, the plaintiffs' property, to be filled at said Matanzas with their said merchandise then and there being, and thence and thereby to transport into the United States their said sugars and molasses; and the plaintiffs aver that said barrels were thus transported, filled, and returned to the United States as hereinafter further set forth, and were never owned elsewhere than in the United States, and by these plaintiffs, nor out of their territory, except while in transitu as aforesaid, touching at Matanzas to be filled as aforesaid, and thence were transported back to the United States, and arrived with their said contents in the said United States, to wit, at the port of New Orleans, and their said contents were there entered and placed in custody of the proper revenue officers of the United States for the assessment of legal duties thereon, under and by virtue of the laws of the United States, to wit, at said port of New Orleans, and thence were forwarded to said port of St. Louis, where plaintiffs reside, and where the proper duties chargeable thereon were to be collected by the proper officers of the United States, and there remained in defendant's hands as such revenue officer, to wit, surveyor and deputy collector for said port, to wit, in the district of

New Orleans, on the first day of May, A. D. 1854. Plaintiffs aver, that they were then and there ready and willing, and offered to pay all lawful duties and charges (to wit) on the said importations of sugars and molasses, and on all charges thereupon, excluding the said barrels, which were of their own product and manufacture of the said United States, and which were not imported from any foreign country otherwise than as aforesaid, (to wit,) in transit out from and back to the United States, and on none of which had any drawback or bounty been allowed, or any allowance made; and all said facts were then and there duly shown to the defendant in his said capacity of surveyor and deputy collector, by affidavit, on the part of plaintiffs, made before him as such, and fully and specifically and truly set forth in said affidavit; and plaintiffs were ready and then and there offered to defendant to pay all the said duties and charges legally assessable on said importations, (to wit,) excluding only any duties assessed on the value of said barrels as importations from a foreign country, (to wit,) as hereafter stated, and on such payment demanded possession of his said merchandise; but defendant then and there demanded payment of a further sum, to wit, an amount equal to 30 per centum on the value of all said barrels, (to wit) the amount of five thousand one hundred and eighty-four $\frac{75}{100}$, ($5,184 75,) which demand was not authorized by the laws of the United States, and refused to surrender possession of the same, except upon payment of said further and additional sum, which was illegally claimed thereon; and in order to get possession of said merchandise belonging to them, plaintiffs were thus constrained to pay, and did pay, the whole of said claims and the whole of said illegal duty on said barrels and hogsheads, to wit, on the first day of May, A. D. 1854, and did then and there protest in writing against said alleged illegal charge on said barrels, and the exaction thereof as aforesaid, therein specially setting forth the reasons and grounds thereof, and wherein it was an illegal assessment as aforesaid; and in consideration of the premises, and by reason thereof, the defendant then and there became and was indebted to the plaintiffs in the further sum of eight thousand dollars, and in consideration thereof, then promised to pay the same to the plaintiffs when he should thereunto be afterwards requested; yet, though often requested, he still has not and refuses to pay the same, to plaintiffs' damage eight thousand dollars; wherefore they ask judgment.

By SHEPLEY,
With whom is KASSON, their Att'ys.

Am'd Bill of Particulars.

And said amended bill of particulars is as follows:

In the Circuit Court of the United States for Missouri district.

DISTRICT OF MISSOURI, *set.*

WILLIAM H. BELCHER and CHARLES BELCHER
vs.
WILLIAM A. LINN.

And now comes the plaintiff, and by leave of the court files this his amended bill of particulars of the demand of said plaintiffs as follows:

WILLIAM A. LINN
To BELCHER & BRO.....DR.

To amount of duties illegally exacted by said Linn, as Inspector and Surveyor, acting as Collector of the port of St. Louis, and paid by plaintiffs to him under protest, on the value of barrels which were shipped by plaintiffs out of the United States, which barrels were of growth and manufacture of the United States, and on which no allowance, bounty or drawback had been allowed, which barrels were brought back into the United States by the vessels and at the time as below specified.

Time when duties were paid.	No. bbls.	Value upon which duties were paid.
Oct. 21, 1853.	394 bbls., bro't by brig Rainbow, entered at New Orleans May 2d, 1853, a $2 each.....	788 00
Oct. 21, 1853.	1,152 do., bro't by b'que Alnah, entered at New Orleans May 9, 1853, a $2.....	2,304 00
Nov., 1853.	788 do., bro't by brig Rainbow, entered at New Orleans June 29, 1853, a $2.....	1,576 00
Jan'y 28, 1854.	1,141 do., bro't by brig Crocus, entered at New Orleans Sept. 13, 1854, a $1 50.....	1,711 50
March 17, 1854.	206 do., bro't by sch'r Ch's Henry, entered at New Orleans 10 May, 1853, a $1 75.....	360 50
Do. do.	1,200 bbls. entered at New Orleans, bro't by b'que Catharine, May 18, 1853, a $1 75.....	2,100 00

Account—Continued.

Time when duties were paid.	No. bbls.	Value upon which duties were paid.
March 17, 1854.	1,235 bbls., bro't by brig Emeline, entered at New Orleans June 6, 1853, a $1 75	2,161 25
Ap'l 21, 1854.	1,969 do., bro't by B. K. Franklin, entered at New Orleans May 19, 1853, a $1 75	3,445 75
Do. do.	435 do., bro't by brig Crocus, entered at New Orleans May 18th, 1853, a $1 75	761 25
Do. do.	1,035 do., bro't by the Jno. Dutton, entered at New Orleans June 6th, 1853, a $1 75	1,813 00
	Making in all the value	$17,021 25
	To this add commissions of 2½ per cent. on same	425 53
	Whole value on which duties were illegally exacted	$17,446 88

The duty being 30 per cent. so exacted, will be..... $5,233 94

By last six vessels were also imported and entered as above the following packages, containing sugars and molasses, to wit:

102 hogsheads by sch'r Chas. Henry.
128 " " Catharine.
197 " " Crocus, May 18.

497 Do. in all, which, valued at $5 each, would make the sum of..... $2,885
Add commissions, 2½ per ct..... 62 12

2,547 12

The duty of 30 per cent. illegally charged and collected on above..... 764 13

$5,998 07

And said plea is as follows:

Plea.

In the Circuit Court of the United States, district of Missouri, ss.

WILLIAM H. BELCHER and CHARLES BELCHER vs. WILLIAM A. LINN.

And the said defendant, William A. Linn, by his attorney, Thomas C. Reynolds, comes and defends the wrong and injury, when, &c., and says that he did not undertake and promise in manner and form as the plaintiffs in this suit in the several counts in their declaration and amendment thereto, and bill of particulars, have above thereof declared against said defendant, and of this he puts himself upon the country.

THO'S C. REYNOLDS,
Att'y for Def't.

And said joinder is as follows:
And the said plaintiffs do the like.

DICK & SHEPLEY,
Att'ys for Pl'ff.

Jury.

And afterwards, to wit, at a circuit court of the United States begun and held for Missouri district on the 10th day of November, 1856, was had the following proceeding:

WILLIAM H. BELCHER, &c., Plaintiffs, agst. WILLIAM A. LINN, Defendant. } Case.

This day come the parties by their attorneys, and this case being called for trial, and both parties being ready, it is ordered that a jury come, and thereupon come said jury, to wit: A. G. Blakey, R. C. Henry, John J. Palmer, J. W. Barnfield, J. D. Crane, D. Huner, J. Steinacker, Wm. Gibson, Montgomery Bryant, T. A. Caswell, E. F. Deits and D. A. Harvey, who were sworn well and truly to try the issues joined between the parties, and the trial of this case progressed; but not being concluded at the hour of adjournment, it is ordered that further proceedings herein be continued until to-morrow morning.

And afterwards, viz., on the 11th day of November, 1856, at the same term of said court was had the following proceeding:

WILLIAM H. BELCHER, &c., Plaintiffs, agst. WILLIAM A. LINN, Defendant. } Case.

This day come again their attorneys, and the jury sworn herein being present, the trial of this case progressed; but not being con-

cluded at the hour of adjournment, further proceedings are continued until to-morrow morning.

Trial.

And afterwards, viz., at the same term of the said court, on the 12th day of November, 1856, was had the following proceeding:

WILLIAM H. BELCHER, &c., agst. WILLIAM A. LINN. } Case.

This day come again the parties by their attorneys, and the jury sworn herein being present, the trial of this case progressed; but not being concluded at the hour of adjournment, further proceedings herein are continued until to-morrow morning.

And afterwards, viz., at the same term of the said court, on the 13th day of November, 1856, was had the following proceeding:

WILLIAM H. BELCHER, Plaintiff, agst. WILLIAM A. LINN, Defendant. } Case.

This day come again the parties by their attorneys, and the jury sworn herein being present, the trial of this case progressed; but not being concluded at the hour of adjournment, further proceedings herein are continued until to-morrow morning.

And afterwards, viz., at the same term of the said court, on the 14th day of November, 1856, was had the following proceeding:

WILLIAM H. BELCHER vs. WILLIAM A. LINN. } Case.

This day come again the parties by their attorneys, and the jury sworn herein being present, the trial of this case progressed; but not being concluded at the hour of adjournment, further proceedings herein are continued until to-morrow morning.

Trial Concluded and Verdict.

And afterwards, viz., at the same term of the said court, on the 15th day of November, 1856, was had the following proceeding:

WILLIAM H. BELCHER, &c., Plaintiffs, vs. WILLIAM A. LINN, Defendant. } Case.

This day come again the parties by their attorneys, and the jury sworn herein being present, the trial of this case progressed; and the evidence being heard and the argument of counsel concluded, the jury returned into court their verdict as follows: "We, the jury, find for the defendant. A. G. Blakey, foreman." It is, therefore, now considered by the court that the plaintiffs, William H.

Belcher and Charles Belcher, take nothing by their suit in this behalf, but that the defendant, William A. Linn, go hence without day, and recover against the said plaintiffs his costs and charges by him in this behalf expended, and that he have execution therefor.

And afterwards, viz., at the same term of the said court, on the 1st day of December, 1856, was had the following proceeding:

WILLIAM H. BELCHER, &c., vs. WILLIAM A. LINN. } Case.

This day come the plaintiffs by their attorneys, and offer herein their bill of exceptions, which having been examined, approved and signed by the judge of the court, is filed and made part of the record in this case.

And said bill of exceptions as filed is as follows:

Bill of Exceptions.

In the Circuit Court of the United States for the Missouri district.

WILLIAM H. BELCHER and CHARLES BELCHER against WILLIAM A. LINN. } No. 2, barrel case.

Be it remembered, that on the trial of the above cause, the plaintiffs offered in evidence the protest as follows:

Protest and Affidavit made by E. G. Ware as Agent at St. Louis, Oct. 21, 1853, *of Importation of Brig Rainbow.*

WM. A. LINN, Esq.,
Surveyor of Customs, acting as Collector, St. Louis, Mo.

SIR: We protest against paying the duties as assessed upon two hundred and fifty (250) hogsheads and three hundred and ninety-four (394) barrels concentrated molasses imported by us from Matanzas, Cuba, per brig "Rainbow," entered at New Orleans, May 2d, 1853, for the following reasons, viz:

That the invoice did give the full market value of said merchandise at Matanzas, at the date thereof, and consequently the dutiable value of the same.

That our agents at New Orleans, under coercion of a threat from the collector of that port to seize the goods for the imposition of a penalty for undervaluation, to which in no case could they be subjected by law, unless the invoice was raised, did add to the amount of said invoice in making their entry one-half ($\frac{1}{2}$) real per arroba, and fifty cents to the charge for barrels, protesting at the same time against the act being a voluntary one on their part.

That said merchandise being imported by owners who were manufacturers thereof, and the collector knowing that to be the fact,

the importer's agent had no right under the laws to make any additions to the invoice in making their entry, or the collector to receive the entry with those additions. That the collector's acts in coercing the additions aforesaid, and then in receiving the entry with those additions, were illegal, and not in conformity to law.

We pay the amount of duties claimed from us upon these goods, viz., twenty-nine hundred and eight $\frac{20}{100}$ dollars ($2,908 $\frac{20}{100}$,) but we claim at the same time that the sum of five hundred and fifteen $\frac{34}{100}$ dollars ($515 $\frac{34}{100}$), being 30 per cent. upon the increased valuation in consequence of the aforesaid raise of one-half real per arroba, and fifty cents per barrel, is illegally exacted from us, and we hereby notify you that we hold you legally indebted to us for that amount, with interest until paid.

We also claim that included in that amount, say twenty-nine hundred and eight $\frac{20}{100}$ dollars, which we now pay you, is the amount of 30 per cent. upon the valuation of three hundred and ninety-four (394) barrels, which we protest against paying, contending that those barrels being of American production and manufacture, having been exported and re-imported by us, having been filled at Matanzas with the products of our manufactory, and having bona fide belonged to us from the time they were made or purchased previous to exportation until the present time, are not legally liable or subject to import duty, and we hold you legally bound to us for the amount of duties we have paid you on the same, with interest until paid.

BELCHER & BROTHER.

St. Louis, Oct. 21, 1853.

Affidavit of E. Y. Ware.

I, Edw'd Y. Ware, agent, do solemnly, sincerely, and truly swear, that the barrels marked and numbered as follows, and mentioned in the entry hereto annexed, and which were exported from New Orleans to Matanzas by the vessels and at the several dates herein specified, viz:

5	bbls.	marked	B ⅃ B	3,	per	brig	John Dutton,	Mch. 5th,	1853.
63	"	"	"	4,	"	"	Emeline,	" 19,	"
143	"	"	"	5,	"	"	Crocus,	" 21,	"
7	"	"	"	6,	"	bark	Jane Doten,	" 21,	"
91	"	"	"	7,	"	brig	Rainbow,	" 29,	"
37	"	"	"	8,	"	bark	Almira,	" 30,	"
48	"	"	"	9,	"	brig	Broome,	April 2,	"
394									

—are, to the best of my knowledge and belief, truly and bona fide the production and manufacture of the United States, and that they were truly exported and imported as herein expressed, and that no drawback, bounty or allowance has been paid or admitted

thereon, or any part thereof, and I hereby protest against paying any duties upon them or the valuation placed upon them, *in them*, in the entry.

EDW'D Y. WARE, *Ag't.*

St. Louis, Oct. 21st, 1853.

To the admission of which in evidence defendant objected as being insufficient, but the court admitted the same, to which the defendant at the time excepted.

Plaintiffs then offered in evidence the following entries, affidavit and protests:

Entry at New Orleans by brig Rainbow, May 2d, 1853, of 394 barrels, and affidavits thereto. Additional protest at St. Louis, Oct. 21, 1854, and entry at St. Louis, with papers attached.

Entry of Merchandise imported by Ch's Belcher & Co., in the brig Rainbow, whereof Bunker is master, from Matanzas, Cuba, for warehouse, and for transportation in bond to St. Louis, New Orleans, the 4th day of May, 1853.

Marks.	Numbers.	Packages and contents.	Quantities.	Per cent.	Dutiable value.
B & B C M	250	Two hundred and fifty hhds. conc'd molasses.		$9,694. 30 p. c., 2,908 20	
B ¼ B 3	5	Three hundred and ninety-four bbls. conc'd molasses.	596,018 lbs. net.....		5,960.1½
" 4	63				
" 5	143				
" 6	7				
" 7	91				
" 8	37				
" 9	48			Packages 1,841.....	2,017.3
	394			Charges, 176.3 rs..	7,977.4½
				Commissions 2½ p. c.	199.3½
					8,177

Samples to app'rs.

Note.

The 5 bbls. mkd. B ¼ B 3 were imported from New Orleans by the Jno. Dutton, Mch. 18th, 1853.

" 63 " " " 4 " Emeline, " 28, "
" 143 " " " 5 " Crocus, " 28, "
" 7 " " " 6 " Jane Doten, Ap'l 6, "
" 91 " " " 7 " Rainbow, " 6, "
" 37 " " " 8 " Almira, " 6, "
" 48 " " " 9 " Broome, " 7, "

The importers raise the concentrated molasses mentioned in the above entry to two and a half reals per arroba, and the barrels to two dollars each; not from a conviction that either have been invoiced at less than their value at the time and port of exportation, but in order to conform to the figures added to an invoice by the custom-house appraisers, and to save ourselves from paying the penalty exacted in case of undervaluation. We herewith protest against this decision of the appraisers, reserving to ourselves the right of seeking a legal remedy at some future time for the recovery of the sums unjustly exacted from us, both principal and interest.

The importers also claim that the barrels specified in the above entry, being of American manufacture and production, shipped from this port to Mantanzas, and being returned in the same conditions apart from their contents as when exported, are not legally liable or subject to impost duty, and they claim that the amount of their value, viz., 394 barrels at $2 each, or $788 00 in the aggregate, should be exempt from impost duty, and they protest against the whole amount of duties exacted and paid in this case, both principal and interest.

pp. CHAS. BELCHER & CO.,
W. B. FRELIGH.

Before me this 17th day of May, 1853.

J. M. HINCKS, *D. C.*

Entry of Merchandise withdrawn from warehouse constructively warehoused, which was brought into this district by Belcher & Bro. from the port of New Orleans on the day of , 185 .

CUSTOM-HOUSE, PORT OF ST. LOUIS,
21*st Ap'l*, 1854.

Marks.	Nos.	Packages and contents.	30 per cent.	Dutiable value.
B & B.....	63	Fifteen hundred and sixty-nine bbls. concentrated Melado green sugar.	740,042 lbs....	12,025.5½
M				
B & B 4.....	105			
" 5.....	58			
" 6.....	321			
" 7.....	130			
" 8.....	144			
" 9.....	133			
" 10.....	206			
" 11.....	228			
" 12.....	161			
" 14.....	20			
	1,569			

Entry of Merchandise—Continued.

Marks.	Nos.	Packages and contents.		30 per cent.	Dutiable value.
M T					
B ↓ B 4.....	1				
" 5.....	3				
" 6.....	14				
" 7.....	7				
" 8.....	6				
" 9.....	6	Fifty-one bbls. Melado dry tips.	22,215 lbs.....	444.2½	
" 10.....	2				
" 11.....	4				
" 12.....	2				
B & B					
M T.....	6				
	51	Barrels.			
B & B.....	17				
C M					
B ↓ B 4—M	2				
" 6.....	9				
" 8.....	2				
" 9.....	2	Three hundred and forty-nine bbls. concentrated molasses.	164,540.....	1,645.3	
" 10.....	52				
" 11.....	14				
" 12.....	17				
" 13.....	2				
" 14.....	232				
	349				
		Packages		2,953.4	
		Charges		1,582.1½	
				18,651.0½	
		Com. 2½ p. c.....		466.2	
				19,117.2½	

Add 87½ pr. 500 lbs. on 1,969 bbls., a 2 rs.. 287.7½
Export duty on 164,540 lbs..... 1,192.2
Com's 2½ p. c. on 780..... 14.4

$19,912.0

$19,478 00, a 30 p. c., $5,843 40

BELCHER & BROTHER.

We protest against paying duties as assessed on this entry, so far as the value of the packages mentioned therein is included in the computation of the same, for the reasons and on the grounds set forth in our entry and protest, made March 28th, 1854.

BELCHER & RROTHER.

April 21st, 1854.

I, Charles Belcher, do solemnly, sincerely, and truly swear that the barrels marked and numbered as follows, and mentioned in

the entry hereto annexed, and which were exported from New Orleans to Matanzas by the vessels and at the dates here specified, viz:

108	bbls.	mkd.	B ⅃ B	4,	pr.	brig	Emeline,	Mch. 19th,	1853.
61	"	"	"	5,	"	"	Crocus,	" 21,	"
344	"	"	"	6,	"	bark	Jane Doten,	" 26,	"
137	"	"	"	7,	"	brig	Rainbow,	" 29,	"
152	"	"	"	8,	"	bark	Almira,	" 30,	"
141	"	"	"	9,	"	brig	Broome,	Ap'l 2,	"
260	"	"	"	10,	"	bark	Catharine,	" 8,	"
246	"	"	"	11,	"	"	Franklin,	" 12,	"
180	"	"	"	12,	"	"	Alnah,	" 14,	"
2	"	"	"	13,	"	brig	John Dutton,	" 20,	"
252	"	"	"	14,	"	"	Crocus,	" 21,	"

—are, to the best of my belief and knowledge, truly and bona fide of the production and manufacture of the United States, and that they were truly exported and imported as herein expressed, and that no drawback, bounty, or allowance has been paid or admitted thereon, and I hereby protest against paying any duties upon them or the valuation placed on them in the entry. So help me God.

CHAS. BELCHER.

Sworn to the 21st day of April, 1854, before me—

I also protest against paying duties on the 86 bbls. marked B & B mentioned in the entry, which barrels were exported from New Orleans to Matanzas in 1852, but the particular conveyance and date of export I am not able to designate, or on the valuation placed on them in the entry.

Entry at New Orleans of 1,152 barrels by Alnah, 9th May, 1853, and affidavit thereto, and two protests, at St. Louis, dated Oct. 21, 1853. Entry at St. Louis, with papers attached, as follows:

Entry of Merchandise imported by Chas. Belcher & Co., in the bark Alnah, whereof York is master, from Matanzas, Cuba, for warehouse and for transportation in bond to St. Louis, New Orleans, the 10th day of May, 1853.

Marks.	Nos.	Packages and contents.	Per cent.	Dutiable value.
B & B C M	149			
B ⅃ B 3	2			
" 4	115			
" 5	74			

Entry of Merchandise—Continued.

Marks.	Nos.	Packages and contents.	Per cent.	Dutiable value.
" 6	265			
" 7	136			
" 8	114	Thirteen hundred and one bbls. conc'd molasses—602,144 lbs. net		6,021.34/100
" 9	184			
" 10	149	Packages	1,951.4	
" 11	148	Charges	164.6	
" 12	65			2,116.2
	1,301			8,137.54/100
			Commis'n 2½ p. c.	203.34/100
				8,341.1

Note.

The 2 bbls. mkd. B 4 B 3 were exported from New Orleans by the Jno. Dutton, Mch. 18, 1853.

" 115	"	"	" 4	"	Elmira,	"	28,	"
" 74	"	"	" 5	"	Crocus,	"	28,	"
" 265	"	"	" 6	"	Jane Doten,	Apl.	6,	"
" 136	"	"	" 7	"	Rainbow,	"	6,	"
" 114	"	"	" 8	"	Almira,	"	6,	"
" 84	"	"	" 9	"	Brown,	"	7,	"
" 149	"	"	" 10	"	Catharine,	"	20,	"
" 148	"	"	" 11	"	Franklin,	"	20,	"
" 65	"	"	" 12	"	Alnah,	"	20,	"

We, the importers, raise the concentrated molasses mentioned in the above entry to two and a half reals per arroba, and the barrels to two dollars apiece, not from a conviction that either have been invoiced at less than their value at the time and port of exportation, but in order to conform to the figures added to our invoice by the custom-house appraisers, and to save ourselves from paying the penalty exacted in cases of undervaluation. We herewith protest against this decision of the appraisers, reserving to ourselves the right of seeking a legal remedy at some future time for the recovery of the sums unjustly exacted of us, both principal and interest.

And the importers claim that the barrels specified in the above entry being of American manufacture and production, shipped from this port to Matanzas, and being returned in the same condition, apart from their contents, as when exported, are not legally liable or subject to impost duty, and they claim that the amount of their value, viz., 1,152 barrels at $2 00 each, or $2,304 $\frac{00}{100}$ in the aggregate, should be exempt from impost duty, and they protest

against the whole amount of duties exacted and paid in this case, both principal and interest.

pp. CHS. BELCHER & CO.,
W. B. FRELIGH.

Before me this 17th day of May, 1853.

J. W. HINCKS, *C'r.*

WM. A. LINN, Esq.,
Surveyor of Customs, acting as Collector, St. Louis, Mo.

SIR: We protest against paying duties as assessed upon thirteen hundred and one (1,301) barrels concentrated molasses imported by us from Matanzas, Cuba, per bark Alnah, entered at New Orleans, May 9th, 1853, for the following reasons, viz: That the invoice did give the full market value of said merchandise at Matanzas, at the date thereof, and consequently the dutiable value of the same. That our agents at New Orleans, under the coercion of a threat from the collector of that port to seize the goods for the imposition of a penalty for undervaluation, to which in no case could they be subjected by law, unless the invoice was raised, did add to the amount of said invoice in making their entry one-half ($\frac{1}{2}$) real per arroba, and fifty (50) cents to the charge for barrels, protesting at the same time against the act being considered a voluntary one upon their part. That said merchandise being imported by owners who were manufacturers thereof, and the collector knowing that to be the fact, the importer's agents had no right under the laws to make any additions to the invoice in making their entry, or the collector to receive the entry with such additions. That the collector's acts in coercing the additions aforesaid, and then in receiving the entry with those additions, were illegal, and not in conformity to law. We pay the amount of duties claimed from us upon these goods, viz: thirty-two hundred seventy-three $\frac{90}{100}$ dollars ($3,273 90), but we claim at the same time that the sum of six hundred and eighty-five $\frac{67}{100}$ dollars ($685 $\frac{67}{100}$), being 30 p. c. upon the increased valuation in consequence of the aforesaid raise of $\frac{1}{2}$ real per arroba, and 50 c. per barrel, is illegally exacted from us, and we hereby notify you that we hold you legally indebted to us for the amount, with interest until paid. We also claim that included in the said amount of ($3,273 97) which we now pay you, is the amount of 30 p. c. upon the valuation of 1,152 barrels, which we protest against paying as illegally assessed, contending that these barrels being of American production and manufacture, having been exported and reimported by us, filled with the products of our manufactory, and having bona fide belonged to us from the time they were made or purchased previous to exportation until the present time, are not legally liable or subject to import duty, and

we hold you legally bound to us for the amount of duties we have paid you on same, with interest, until paid.

BELCHER & BROTHER.

St. Louis, *Oct.* 21*st*, 1853.

Entry of Merchandise withdrawn from warehouse constructively warehoused, which was brought into this district by Belcher & Brother, of St. Louis, from the port of New Orleans, on the day of , 1853.

Custom-house, Port of St. Louis,
21 *Oct.*, 1853.

Marks.	Nos.	Packages and contents.	30 per cent.	Total.
B & B C M	149	Thirteen hundred and one bbls. conc'd molasses—602,144 lbs. net.	$10,913	
B ⅃ B—3	2			
" 4	115			
" 5	74			
" 6	265			
" 7	136			
" 8	114			
" 9	84			
" 10	149			
" 11	148		Invoice value....	8,341.1
	65		Add	1,505 36
" 12			50 cent. per bbl..	650 50
	1,301			$2,155 86
			2½ per cent.....	53 89

1,301 bbls. molasses, 631,737. Duty on $10,913, a 30 per cent., $3,273 90.

Note.

The 2 bbls. mkd. B ⅃ B 3 were imported from Matanzas by the Jno. Dutton, Mch. 18th, '53.

"	115	"	"	"	4	"	Emeline,	"	28	"
"	74	"	"	"	5	"	Crocus,	"	28	"
"	265	"	"	"	6	"	Jane Doten,	Apl.	6	"
"	136	"	"	"	7	"	Rainbow,	"	6	"
"	114	"	"	"	8	"	Almira,	"	6	"
"	84	"	"	"	9	"	Brown,	"	7	"
"	149	"	"	"	10	"	Catharine,	"	20	"
"	148	"	"	"	11	"	Franklin,	"	20	"
"	65	"	"	"	12	"	Alnah,	"	20	"

I, Edw'd Y. Ware, agent, do solemnly, sincerely and truly swear that the barrels marked and numbered as follows, and mentioned in the entry hereto annexed, which were exported from New Orleans to Matanzas by the vessels and at the several dates herein specified, viz:

2	bbls.	mkd.	B ⊥	B	3	pr.	brig	John Dutton,	Mch. 5th,	1853.
115	"	"	"		4	"	"	Emeline,	" 19,	"
74	"	"	"		5	"	"	Crocus,	" 21,	"
265	"	"	"		6	"	bark	Jane Doten,	" 26,	"
136	"	"	"		7	"	brig	Rainbow,	" 29,	"
114	"	"	"		8	"	bark	Almira,	" 30,	"
84	"	"	"		9	"	brig	Broome	April 2,	"
149	"	"	"		10	"	bark	Catharine,	" 8,	"
148	"	"	"		11	"	"	Franklin,	" 12,	"
65	"	"	"		12	"	"	Alnah,	" 14,	"
1,152										

—are, to the best of my knowledge and belief, truly and bona fide the production and manufacture of the United States, and that they were truly exported and imported as herein expressed, and that no drawback, bounty or allowance has been paid or admitted thereon, or any part thereof, and I hereby protest against paying any duties upon them or the valuation placed upon them in the entry.

EDW'D Y. WARE, *Agt.*

St. Louis, Oct. 21, 1853.

Entry at New Orleans per brig Rainbow of 788 barrels, 29 June, 1853, and affidavits thereto, and two protests at St. Louis, dated Nov. 19th, 1853, and entry at St. Louis, with papers attached.

Entry of Merchandise imported by Cha's Belcher & Co. in the Am. brig Rainbow, whereof Bunker is master, from Matanzas, for warehouse and for transportation in bond to St. Louis.

NEW ORLEANS, *the 29th day of June*, 1853.

Marks.	Nos.	Packages and contents.	Quantities.	Per cent.	Dutiable value.
B B M O S	72	Seventy-two hhds. mol's sugar.....	115,083 lbs.	2 301.5½	
M S	8	Eight hhds. Melado sugar.	11,988 "	299.5½	
M O T	33	Thirty-three hhds. mol's tips.....	47,741 "	656.3½	
M T	1	One hhd. Melado dry tips	1,593 "	35.7	
B B M	24				
B ⊥ B M	4				
"	5				
"	6				
"	7				
"	8				
"	10	Seven hundred and nine-tv-eight barrels concen-trated Melado or green sugar.	385,487 lbs.		
"	11				
"	12				

Entry of Merchandise—Continued.

Marks.	Nos.	Packages and contents.	Quantities.	Per cent.	Dutiable value.
B ⅃ B M 13	130				
" 14	61				
" 15	71		114 hhds.	$4,305	
" 16	24		798 bbls.	9,032	
" 17	57		14 "	190	
" 18	37				
		798 barrels.....	812	13,527	
M T				a 30 p. c...	$4,058 10
B † B 4	1				
" 5	1				
" 7	1	Fourteen barrels Melado	6,311 lbs.		
" 10	5	wet tips.....			
" 11	1				
" 16	4				
" 17	1				
		14 barrels.....	.....	118.21/2	
			Packages.....	1,788	
			Charges.....	1,155	
			Com's.....	327.4	$13,428.31/2

I, W. B. Freligh, agent, do solemnly and truly swear, that the barrels marked and numbered as follows—

12 bbls. mkd. B ⅃ B 4 were exported from New Orleans to Matanzas, pr. bg. Emeline, Mch. 19th, 1853.

43	"	"	"	5	"	"	Crocus,	"	21	"
2	"	"	"	6	"	bk.	Jane Doten,	"	26	"
2	"	"	"	7	"	bg.	Rainbow,	"	29	"
6	"	"	"	8	"	bk.	Almira,	"	30	"
193	"	"	"	10	"	bk.	Catharine,	Ap'l	8	"
83	"	"	"	11	"	bk.	Franklin,	"	14	"
62	"	"	"	12	"	"	Alnah,	"	14	"
130	"	"	"	13	"	bg.	Jno. Dutton,	"	20	"
61	"	"	"	14	"	"	Crocus,	"	21	"
71	"	"	"	15	"	"	Emeline,	"	25	"
28	"	"	"	16	"	bk.	Jane Doten,	May	4	"
58	"	"	"	17	"	"	Almira,	"	6	"
37	"	"	"	18	"	bg.	Broome,	"	11	"

—and mentioned in the entry hereto annexed, are, to the best of my knowledge and belief, truly and bona fide of the product and manufacture of the United States, and that they were truly exported and imported as therein expressed, and that no drawback, bounty or allowance has been paid or admitted thereon, or any part thereof; and I protest against paying any duties. So help me God.

W. B. FRELIGH.

Before me, this the 29th day of June, 1853.

J. W. HINCKS, *D. C.*

I, Chas. Belcher, do solemnly, sincerely and truly swear, that the barrels marked and numbered as follows, and mentioned in the entry hereto annexed, and which were exported from New Orleans to Matanzas, by the vessels at the several dates herein specified, viz:

12	bbls.	mkd.	B ⊥ B	4	per	brig	Emeline,	Mch. 19th, 1853.
43	"	"	"	5	"	"	Crocus,	" 21 "
2	"	"	"	6		bark	Jane Doten,	" 26 "
2	"	"	"	7		brig	Rainbow,	" 29 "
6	"	"	"	8		bark	Almira,	" 30 "
193	"	"	"	10	"	"	Catharine,	April 8 "
83	"	"	"	11	"	"	Franklin,	" 12 "
62	"	"	"	12	"	"	Alnah,	" 14 "
130	"	"	"	13		brig	Jno. Dutton,	" 20 "
61	"	"	"	14	"	"	Crocus,	" 21 "
71	"	"	"	15	"	"	Emeline,	" 25 "
28	"	"	"	16		bark	Jane Doten,	May 4 "
58	"	"	"	17	"	"	Almira,	" 6 "
37	"	"	"	18		brig	Broome,	" 11 "

788

—are, to the best of my knowledge and belief, truly and bona fide the production and manufacture of the United States, and that they were truly exported and imported as herein expressed; and that no drawback, bounty or allowance has been paid or admitted thereon, or on any part thereof, and I hereby protest against paying any duties upon them or the valuation placed upon them in the entry. CHAS. BELCHER.

St. Louis, Nov. 19th, 1853.

Sworn to this 19th day of Nov., 1853, before me.

WILLIAM A. LINN,
Surveyor and Inspector.

WM. A. LINN, Esq.,
Surveyor of Customs, acting as Collector, St. Louis, Mo.

SIR: We protest against paying duties as assessed upon the merchandise imported by us from Matanzas, Cuba, per brig Rainbow, into New Orleans, and entered June 29th, 1853, for the following reasons, viz:

The invoice and entry did give and express fully and truly the "actual market value" *of* the time and place of their exportation to the United States, with all costs and customary charges, and that the law makes their dutiable value. The New Orleans custom-house appraisers, after making additions to the invoice and entry, failed to notify the consignees thereof, thereby depriving them of the opportunity to call for a re-appraisement, the right to do which is expressly granted by law. We contend that this omission of the appraisers vitiates and annuls their appraisement.

This cargo of merchandise was included in the agreement between the government of the United States and Belcher & Brother, signed by Gen'l Downs, collector of the district of New Orleans, to submit the re-appraisement of the U. S. appraisers at large, at New York, certain importations, the dutiable value of which was in dispute between the parties; and the withdrawal of this cargo from said re-appraisement, and the assessment of duties on the original appraisement, was an unauthorized act of the acting collector at New Orleans, and not binding on either party.

These goods were withheld from us, and detained in New Orleans by the custom-house, several months, causing a considerable loss by drainage and leakage: and we contend that duties can be legally collected only upon the goods delivered by the custom-house officers to importers. We therefore claim that the portion of the duties exceeding 30 per cent. on the invoice valuation of the goods on the quantity delivered to us is illegally exacted, and we hereby notify you that we hold you to be legally indebted to us in the amount of the same, with interest thereon until paid.

Very respectfully,

BELCHER & BROTHER.

St. Louis, Nov. 19th, 1853.

Entry of Merchandise withdrawn from warehouse constructively warehoused, which was brought into this district by Belcher & Bro. from the port of New Orleans on the day of , 185 .

CUSTOM-HOUSE, PORT OF ST. LOUIS,
19*th Nov.*, 1853.

Marks.	Nos.	Packages and contents.	Quantity.	30 per cent.	
B B					
M O S	72	Seventy-two hhds. mol's sugar	15,083 lbs.	.....	2,301.5¼
M S	8	Eight " Melado "	11,988	.....	299.5½
M O T	33	Thirty-three mol's tips.....	47,741	.....	656.3½
M T	1	One hhd. mol's dry "	1,593	.....	35.7
B B					
M	24				
B ⅃ B 4	11				
" 5	42				
" 6	2				
" 7	1				
" 8	6				
" 10	188	Seven hundred and ninety-eight bbls. concentrated Melado or green sugar.	385,487		
" 11	82				
" 12	62				
" 13	130		114 hhds.....	4,305	
" 14	61		798 bbls.....	9,032	
" 15	71		14.....	190	
" 16	24				
" 17	57			13,527	
" 18	37			At 30 p. ct....	4,085.10

Entry of Merchandise—Continued.

Marks.	Nos.	Packages and contents.	Quantity.	30 per cent.	
M T					
B ⊥ B 4	1				
" 5	1				
" 7	1				
" 10	5	Fourteen barrels Melado wet tips.	6,311.....	118.2½	
" 11	1				
" 16	4				
" 17	1				
			Packages	1,788	
			Charges	1,155	
			Com's.....	327.4	
				$13,428.3½	

BELCHER & BROTHER.

Entry at New Orleans of 206 barrels per sch. Charles Henry, 10 May, 1853, and affidavit thereto, and one protest at St. Louis 17th March, 1854, and entry at St. Louis, with papers attached, as follows:

Entry of Merchandise imported by Cha's Belcher & Co., in the schooner Cha's Henry, whereof Appleby is master, from Matanzas, Cuba, for warehouse and transportation in bond to St. Louis.

NEW ORLEANS, *the 14th day of May,* 1853.

Marks.	Nos.	Packages and contents.	Quantities.	Per ct.	Total.
B & B C M	102	One hundred and two hhds. conc'd mol's.			
C M	3				
B ⊥ B 4	18				
" 5	13				
" 6	54				
" 7	22	Two hundred and nine bbls. conc'd molasses.	265,538 lbs. net...	.....	2,655.3
" 8	21				
" 9	67				
" 10	4				
" 11	6				
" 12	1				
	209				

Note.

The	18	bbls.	mkd.	B ⊥ B	4	were	imported from New Orleans by the	Emeline,	Mch.	28th, 1853.
"	13	"	"	"	5	"		Crocus,	"	28th, "
"	54	"	"	"	6	"		J. Doten,	Apl.	6th, "
"	22	"	"	"	7	"		Rainbow,	"	6th, "
"	21	"	"	"	8	"		Almira,	"	6th, "
"	67	"	"	"	9	"		Broome,	"	7th, "
"	4	"	"	"	10	"		Catharine,	"	20th, "
"	6	"	"	"	11	"		Franklin,	"	20th, "
"	1	"	"	"	12	"		Alnah,	"	20th, "
	206									

The importers claim that the barrels specified in the above entry, being of American manufacture and production, shipped from this port to Matanzas, and being returned in the same condition, apart from their contents, as when exported, are not legally liable or subject to impost duty, and they claim that the amount of their value, viz: 206 bbls. at $1 50 each, or $309 00 in the aggregate, should be exempt from impost duty, and protest against any duty paid on the same.

10th May, 1853.

pp. CHS. BELCHER & CO.,
W. B. FRELIGH.

J. W. HINCKS, *D. C.*

Entry of Merchandise withdrawn from warehouse constructively warehoused, which was brought into this district by Belcher & Bro. from the port of New Orleans on the day of , 185 .

CUSTOM-HOUSE, PORT OF ST. LOUIS,
17*th Mch.*, 1854.

Marks.	Nos.	Packages and contents.	Quantity.	30 per ct.	Total.
B & B C M	102	One hundred and two hhds. conc'd molasses.			
C M	3	Two hundred and nine bbls. concentrated molasses.	265,538 lbs. net.		
B ⊥ B 4	18				
" 5	13				
" 6	54				
" 7	22				
" 8	21				
" 9	67				
" 10	4				
" 11	6				
" 12	1				
	209				

Entry of Merchandise—Continued.

Marks.	Nos.	Packages and contents.	Quantity.	30 per ct.	Total.
		Packages and charges included.	3,647.0½		
		Add 87½ c. pr. 500 lbs. for exp. duty.	464.5½		
		On 209 bbls. at 2 rs.....	52.2		
		2½ per cent. com.....	12.7		
			4,176.6½		
		Deduct.....	49.6½		
				$4,127	
				At 30 pr. c.	1,238.10

BELCHER & BRO.

Note.

The 18 bbls., as stated, were imported from New Orleans by the

					Emeline,	March	28th,	'53.
"	13	"	"	"	Crocus,	"	"	"
"	54	"	"	"	J. Doten,	April	6th,	'53.
"	22	"	"	"	Rainbow,	"	"	"
"	21	"	"	"	Almira,	"	"	"
"	67	"	"	"	Broom,	"	7th,	'53.
"	4	"	"	"	Catharine,	"	20th,	'53.
"	6	"	"	"	Franklin,	"	"	"
"	1	"	"	"	Alnah,	"	"	"

The importers claim that the barrels specified in the above entry, being of American manufactures and production, shipped from this port to Matanzas, and being returned in the same condition, apart from their condition, apart from their contents as when exported, are not legally liable or subject to impost duty, and they claim that the amount of their value, viz: 206 barrels at $1 50 each, or $309 00 in the aggregate, should be exempt from impost duty, and protest against any duty paid on the same.

(Signed) CHAS. BELCHER & CO.
W. B. FRELIGH.

Before me—
(Signed) J. W. HINCKS, *D. C.*

I, Charles Belcher, do solemnly, sincerely, and truly swear, that the barrels marked and numbered as follows, and mentioned in the entry hereto annexed, and which were exported from New Orleans to Matanzas by the vessels and at the several dates herein specified, viz:

18	bbls.	mkd. B ↓ B	4	per brig	Emeline,	Mch.	19th,	1853.
13	"	"	5	"	Crocus,	"	21	"
54	"	"	6	"	Jane Doten,	"	26	"
22	"	"	7	"	Rainbow,	"	29	"
21	"	"	8	"	Almira,	"	30	"
67	"	"	9	"	Broome,	April	2	"
4	"	"	10	"	Catharine,	"	8	"
6	"	"	11	"	Franklin,	"	12	"
1	"	"	12	"	Alnah,	"	14	"

—are, to the best of my knowledge and belief, truly and bona fide the production and manufacture of the United States, and that they were truly exported and imported as herein expressed, and that no drawback, bounty, or allowance has been paid or admitted thereon, and I hereby protest against paying any duties upon them or on the valuation placed on them in the entry. So help me God.

CHAS. BELCHER.

Sworn to, this 17th day of March, 1854, before me.

WILLIAM A. LINN,
Surveyor and Inspector.

I also protest against paying duties on the barrels and the hogsheads mentioned in the entry hereto annexed, on the ground that there is no law which imposes any duty on packages; that packages were specially exempted from duty by the revenue act of 1816; that packages were not subject to duty under the act of 1842; that the act of 1846 imposes no duty on packages; that if they are subject to any duty under that act, it is a duty of twenty per centum as non-enumerated articles.

CHA'S. BELCHER.

Entry at New Orleans of 1,200 bbls. per Catharine, May 18th, 1853, and affidavit thereto, and due protest thereto at St. Louis, 17th March, 1854, and entry at St. Louis, with papers attached.

Entry of Merchandise imported by Ch's Belcher & Co., in the bark Catharine, whereof Watts is master, from Matanzas, Cuba, for warehouse and for transportation in bond to St. Louis.

NEW ORLEANS, *the day of May*, 1853.

Marks.	Nos.	Packages and contents.	Quantity.	Per cent.	Total.
B B C M	128	One hundred and twenty-eight hhds. conc'd mol's.			

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Entry of Merchandise—Continued.

Marks.	Nos.	Packages and contents.	Quantity.	Per cent.	Total.
C M	93	Twelve hundred barrels concentrated molasses.	777,357 at 2 rs.	7,773.4½	
B ↓ B 4	33				
" 5	40				
" 6	203				
" 7	37				
" 8	19				
" 9	127				
" 10	202		Hhds. and bbls....	2,440	
" 11	237				
" 12	199		Ch'ges and com's	476.7	
" 14	10				$10,690.3½
	1,200				

I, W. B. Freligh, agent, do solemnly, sincerely and truly swear that the barrels marked and numbered as follows—

33 bbls. B ↓ B 4 were exported from New Orleans to Matanzas p'r Emeline, Mch. 19th, 1853.
40 " " 5 " " Crocus, " 21, "
203 " " 6 " " Jane Doten, " 26, "
37 " " 7 " " Rainbow, " 29, "
19 " " 8 " " Almira, " 30, "
127 " " 9 " " Broome, Ap'l 2, "
202 " " 10 " " Catharine, " 8, "
237 " " 11 " " Franklin, " 14, "
199 " " 12 " " Alnah, " 14, "
10 " " 14 " " Crocus, " 21, "

—mentioned in the entry hereto annexed—are, to the best of my knowledge and belief, truly and bona fide of the product and manufacture of the United States, and that they were truly exported and imported as therein expressed, and that no drawback, bounty or allowance has been paid or admitted thereon, or any part thereof. So help me God.

W. B. FRELIGH.

Before me this the 28th day of May, 1853.

J. W. HINCKS, *D. C.*

Entry of Merchandise withdrawn from warehouse constructively warehoused, which was brought into this district by Belcher & Brother from the port of , on the day of , 1854.

CUSTOM-HOUSE, PORT OF ST. LOUIS,
17th *Mch.*, 1854.

Marks.	Nos.	Packages and contents.	Quantity.	Per cent.	Total.
B and B C M	128	One hundred and twenty-eight hhds. conc'd mol's.			
C M	93				
B ⊥ B	4				
"	5		7,773.4½		
"	6				
"	7	Twelve hundred barrels concentrated molasses.			
"	8				
"	9				
"	10				
"	11				
"	12				
"	14				
	10				
	1,200	Hhds. and bbls.....	2,440		
		Ch'ges and coms.....	476.7		
			$10,690.3½	$12,120 a 30 p. c.	$3,636 00

BELCHER & BROTHER.

I, Charles Belcher, do solemnly, sincerely and truly swear, that the barrels marked and numbered as follows, and mentionedin the entry hereto annexed, and which were exported from New Orleans to Matanzas by the vessels and at the dates herein specified, viz:

33	bbls.	mkd.	B ⊥ B	4	pr.	b'g	Emeline,	Mch.	19th,	1853.
40	"	"	"	5	"	"	Crocus,	"	21,	"
203	"	"	"	6	"	bk.	Jane Doten,	"	26,	"
37	"	"	"	7	"	b'g	Rainbow,	"	29,	"
19	"	"	"	8	"	"	Almira,	"	30th,	"
127	"	"	"	9	"	b'g	Broome,	Apl.	2d,	"
202	"	"	"	10	"	bk.	Catharine,	"	8th,	"
237	"	"	"	11	"	"	Franklin,	"	12,	"
199	"	"	"	12	"	"	Alnah,	"	14,	"
10	"	"	"	14	"	b'g	Crocus,	"	21,	"

—are, to the best of my knowledge and belief, truly and bona fide the production and manufacture of the United States, and that they were truly exported and imported as herein expressed, and that no drawback, bounty or allowance has been paid or admitted thereon, and I hereby protest against paying any duties on them, or on the

valuation placed on them in the entry. I also protest against paying any duties on the 93 bbls. marked C M, which are likewise of the production and manufacture of the United States, and were exported to Matanzas during the year 1852, (but the date of export and particular conveyance I am not able to designate,) or on the valuation placed on them in the entry. So help me God.

CH'S BELCHER.

Sworn to this 17th day of March, 1854, before me.

WILLIAM A. LINN,
Surveyor and Inspector.

I also protest against paying duties on the barrels and hogsheads mentioned in the entry hereto annexed, on the ground that there is no law which imposes any duty on packages; that packages were specially exempted from duty by the revenue act of 1816; that packages were not subject to duty under the act of 1842; that the act of 1846 imposes no duty on packages; that if they are subject to any duty under that act, it is a duty of twenty per centum as non-enumerated articles.

CHA'S BELCHER.

Entry at New Orleans of 1,235 bbls. per brig Emeline, June 6th, 1853, and affidavit thereto, and protest at St. Louis, dated 17 March, 1854, and entry at St. Louis, with papers attached, as follows:

Entry of Merchandise imported by Cha's Belcher, &c., in the Am. brig Emeline, whereof Watts is master, from Matanzas, for warehouse, and for transportation in bond to St. Louis. New Orleans, the 7th day of June, 1853.

Marks.	Nos.	Packages and contents.	Quantities.	Per cent.	Total.
B & B S H M	9	Two hundred barrels sugar-house molasses.	7,600 gals.		
B ↓ B 6	3				
" 8	8				
" 10	50				
" 11	17				
" 12	6				
" 14	105				
" 15	2				
	200	Barrels.			
C M B & B	70				
B ↓ B 4	5				
" 5	9				
" 6	36				

Entry of Merchandise—Continued.

Marks.	Nos.	Packages and contents.	Quantity.	Per cent.	Total.
B ⅃ B 7	28				
" 8	15	Ten hundred and thirty-five barrels concentrated molasses.	493,307 lbs....	$4,933.0½	
" 9	29				
" 10	92				
" 11	104				
" 12	53	Barrels and casks.....	.....	1,970.4	
" 13	83				
" 14	274	Charges	.....	156.4	
" 15	237	Commissions	.....	187.2	7,679.1
	1,035	Barrels.			

I, W. B. Freligh, agent, do solemnly, sincerely and truly swear that the barrels marked and numbered as follows, say—

5 bbls., B ⅃ B 4, were exported from New Orleans to Matanzas, pr. Emeline, March 19, 1853.

9	"	5	"	Crocus,	"	21	"
39	"	6	"	Jane Doten,	"	26	"
28	"	7	"	Rainbow,	"	29	"
23	"	8	"	Almira,	"	30	"
29	"	9	"	Broome,	Ap'l	2	"
142	"	10	"	Catharine,	"	8	"
121	"	11	"	Franklin,	"	14	"
59	"	12	"	Alnah,	"	20	"
83	"	13	"	Jno. Dutton,	"	20	"
379	"	14	"	Crocus,	"	21	"
239	"	15	"	Emeline,	"	25	"

and mentioned in the entry hereto annexed, are, to the best of my knowledge and belief, truly and bona fide of the product and manufacture of the United States, and that they were truly exported and imported as therein expressed, and that no drawback, bounty or allowance has been paid thereon, or any part thereof; and I protest against paying any duty. So help me God.

W. B. FRELIGH.

Before me this the 7th day of June, 1853.

J. W. HINCKS, *D. C.*

Entry of Merchandise—Continued.

Marks.	Nos.	Packages and contents.	Quantity.	Per cent.	Total.
B ⅃ B 7	28				
" 8	15				
" 9	29	Ten hundred and thirty-five barrels concentrated molasses.	493,307 lbs....	$4,933.01½	
" 10	92				
" 11	104				
" 12	53	Barrels and casks.....	.....	1,970.4	
" 13	83				
" 14	274	Charges	.....	156.4	
" 15	237	Commissions	.....	187.2	7,679.1
	1,035	Barrels.			

I, W. B. Freligh, agent, do solemnly, sincerely and truly swear that the barrels marked and numbered as follows, say—

5 bbls., B ⅃ B 4, were exported from New Orleans to Matanzas, pr. Emeline, March 19, 1853.

9	"	5	"	Crocus,	"	21	"
39	"	6	"	Jane Doten,	"	26	"
28	"	7	"	Rainbow,	"	29	"
23	"	8	"	Almira,	"	30	"
29	"	9	"	Broome,	Ap'l	2	"
142	"	10	"	Catharine,	"	8	"
121	"	11	"	Franklin,	"	14	"
59	"	12	"	Alnah,	"	20	"
83	"	13	"	Jno. Dutton,	"	20	"
379	"	14	"	Crocus,	"	21	"
239	"	15	"	Emeline,	"	25	"

and mentioned in the entry hereto annexed, are, to the best of my knowledge and belief, truly and bona fide of the product and manufacture of the United States, and that they were truly exported and imported as therein expressed, and that no drawback, bounty or allowance has been paid thereon, or any part thereof; and I protest against paying any duty. So help me God.

W. B. FRELIGH.

Before me this the 7th day of June, 1853.

J. W. HINCKS, *D. C.*

Entry of Merchandise withdrawn from warehouse, which was brought into this district by from the port of on the day of , 185 . Custom-house, port of St. Louis, 17th M'ch, 1854.

Marks.	Nos.	Packages and contents.	Quantity.	30 per cent.	Total.
B & B S H M	9				
B & B 6	3				
" 8	8				
" 10	50	Two hundred bbls. sugar-house molasses.	7,600 gals.....	431.6½	
" 11	17				
" 12	6				
" 14	105				
" 15	2				
	200				
C M B & B	70				
B ↓ B 4	5				
" 5	9				
" 6	36				
" 7	28				
" 8	15				
" 9	29	Ten hundred and thirty-five bbls. concentrated molasses.	493,307 lbs.....	4,933.0½	
" 10	92				
" 11	104				
" 12	53				
" 13	83	Bbls. and casks.....	.....	1,970.4	
" 14	274	Charges	.....	156.4	
" 15	237	Commission	.....	187.2	
	1,035	Bbls.		$7,679.1	
		200 bbls. molasses.....	914 at 30 p. c.	$2,582.40	
		1,035 " "	7,694 at "		

BELCHER & BROTHER.

I, Charles Belcher, do solemnly, sincerely, and truly swear, that the barrels marked and numbered as follows, and mentioned in the entry hereto annexed, and which were exported from New Orleans to Matanzas by the vessels and at the several dates herein specified, viz:

5 bbls. mkd.	B ↓ B	4 pr. brig	Emeline,	Mch.	19th,	1853.
9	"	"	5	"	Crocus,	"	21	"
39	"	"	6 pr. bark	Jane Doten,	"	26	"
28	"	"	7 pr. brig	Rainbow,	"	29	"
23	"	"	8 pr. bk.	Almira,	"	30	"
29	"	"	9 pr. bg.	Broome,	Apl.	2	"
142	"	"	10 pr. bk.	Catharine,	"	8	"
121	"	"	11 "	Franklin,	"	14	"

59	bbls.	mkd.	B & B	12	pr. bk.	Alnah,	Apl. 14,	1853.
83	"	"	"	13	pr. bg.	Jno. Dutton,	" 20	"
379	"	"	"	14	"	Crocus,	" 21	"
239	"	"	"	15	"	Emeline,	" 25	"

—are, to the best of my knowledge and belief, truly and bona fide the production and manufacture of the United States, and that they were truly exported and imported as herein expressed, and that no drawback, bounty, or allowance has been paid or admitted thereon, or on any part thereof, and I hereby protest against paying any duties upon them, or on the valuation placed upon them in the entry, and also against paying any duties on the 79 barrels marked B & B, which are likewise of American production and manufacture, and were exported from New Orleans to Matanzas during the year 1852, but the date of export and the particular conveyance I am not able to designate, or on the valuation placed upon them in the entry. So help me god.

CHAS. BELCHER.

Sworn to, the 17th day of March, 1854, before me.

WILLIAM A. LINN,
Surveyor and Inspector.

I also protest against paying duties on the barrels mentioned in the entry hereto annexed, on the ground that there is no law which imposes any duty on packages; that packages were specially exempted from duty by the revenue act of 1816; that packages were not subject to duty under the act of 1842; that the act of 1846 imposes no duty on packages; that, if subject to any duty under that act, it is a duty of twenty per centum, as non-enumerated articles.

CHAS. BELCHER.

Entry at New Orleans of 417 per brig Crocus, May 18th, 1853, and affidavits thereto, and protest at St. Louis, 25th Apl., 1854, and entry at St. Louis, with paper attached.

Entry of Merchandise imported by Chas. Belcher & Co., in the brig Crocus, whereof Horn is master, from Matanzas, Cuba, for warehouse and transportation in bond to St. Louis.

NEW ORLEANS, *the 19th day of May*, 1853.

Marks.	Nos.	Packages and contents.	Quantities.	Per cent.	Total.
B & B M O S	140	One hundred and forty hhds. molasses sugar.	219,461.....	$3,840.41½	
M O T	54	Fifty-four hhds. molasses wet tips.	80,934.....	1,000.31½	
M T	3	Three hhds. Melado dry tips.	4,239.....	84.6	

Entry of Merchandise—Continued.

Marks.	Nos.	Packages and contents.	Quantity.	Per cent.	Total.
M T 12	2	Twenty-three barrels Melado dry tips.	10,266.....	205.2½	
" 9	2				
" 10	8				
" 11	9				
" 14	2				
	23				
B ⊥ B 4 M	8	Two hundred and seventy-two barrels concentrated Melado green sugar.	128,766 lbs.....	2,092.3½	
5	12				
6	40				
7	18				
8	17				
9	30				
10	43				
11	48				
12	34				
14	5				
M	16				
B & B M	1				
	272				
B & B C M	3	One hundred and forty barrels concentrated molasses.	65,802 lbs.....	658.0	7,881.4
B ⊥ B 5	1				
" 6	3				
" 8	1				
" 10	15				
" 11	2				
" 12	9				
" 13	1				
" 14	105				
	140				
			Packages	$1,637.4	
			Charges	929.6	
					2,567.2
					10,448.6
				Com'n at 2½ per cent.	261.1½
					$10,709.7½

Note.

The 8 bbls. mkd. B ⊥ B 4 were imported from New Orleans by the Emeline, Mch. 28, '53.

" 12 " " " 5 " Crocus, " " "

" 40 " " " 6 " Jane Doten, Apl. 6, "

" 18 " " " 7 " Rainbow, " 6, "

" 17 " " " 8 " Almira, " 6, "

" 30 " " " 9 " Broome, " 7, "

The	43	bbls.	mkd.	B ↓ B	10	by the	Catharine,	Apl.	20, '53.
"	48	"	"	"	11	"	Franklin,	"	20, "
"	34	"	"	"	12	"	Alnah,	"	20, "
"	5	"	"	"	14	"	Crocus,	"	28, "
"	1	"	"	"	5	"	Crocus,	Mar.	28, "
"	3	"	"	"	6	"	Jane Doten,	Apl.	6, "
"	1	"	"	"	8	"	Almira,	"	6, "
"	15	"	"	"	10	"	Catharine,	"	20, "
"	2	"	"	"	11	"	Franklin,	"	20, "
"	9	"	"	"	12	"	Alnah,	"	20, "
"	1	"	"	"	13	"	Crocus,	"	28, "
"	105	"	"	"	14	"	Crocus,	"	28, "

18th May, '53.

W. A.

Entry of Merchandise withdrawn from warehouse constructively warehoused, which was brought into this district by Belcher & Bro. from the port of New Orleans on the day of , 185 .

CUSTOM-HOUSE, PORT OF ST. LOUIS,
21*st Ap'l*, 1854.

Marks.	Nos.	Packages and contents.	Quantity.	30 per cent.	Total.
B & B M O S	140	One hundred and forty hhds. molasses sugar.	219,461 lbs.	3,840.4½	
M O T	54	Fifty-four hhds. mol's wet tips.....	80,034	1,000.3½	
M T	3	Three hhds. Melado dry tips.....	4,239	84.6	
M T No. 12	2	Twenty-three bbls. Melado dry tips.	10,266	205.2½	
9	2				
10	8				
11	9				
14	2				
	23				
B ↓ B 4 M	8	Two hundred and seventy-two bbls. conc'd Melado green sugar.	128,766	2,092.3½	
" 5 "	12				
" 6 "	40				
" 7 "	18				
" 8 "	17				
" 9 "	30				
" 10 "	43				
" 11 "	48				
" 12 "	34				
" 14 "	5				
M	16				
B & B M	1				
	272				

Entry of Merchandise—Continued.

Marks.	Nos.	Packages and contents.	Quantity.	30 per cent.	Total.
B & B					
C M	3				
B ⊥ B	5				
"	6	3			
"	8	1			
"	10	15	One hundred and forty barrels concen'd molasses.	65,801	658
"	11	2			7,881.4
"	12	9			
"	13	1			
"	14	105			
			Packages.....		1,637.4
			Charges		929.6
					10,448.6
			Com's 2½ p. c....		261.1½
					10,709.7½
			197 hhds.....		$6,495 00
			435 bbls.....		4,117 00
					10,612 00
				At 30 p. c....	$3,183 60

BELCHER & BROTHER.

I, Charles Belcher, do solemnly, sincerly, and truly swear that the barrels marked and numbered as follows, and mentioned in the entry hereto annexed, and which were exported from New Orleans to Matanzas by the vessels and at the several dates herein specified, viz:

8	bbls.	marked	B ⊥ B	4,	per	brig	Emeline,	March	19, 1853.
13	"	"	"	5,	"	"	Crocus,	"	21, "
43	"	"	"	6,	"	bark	Jane Doten,	"	26, "
18	"	"	"	7,	"	brig	Rainbow,	"	29, "
18	"	"	"	8,	"	bark	Almira,	"	30, "
32	"	"	"	9,	"	brig	Broome,	Ap'l	2, "
66	"	"	"	10,	"	bark	Catharine,	"	8, "
61	"	"	"	11,	"	"	Franklin,	"	12, "
45	"	"	"	12,	"	"	Alnah,	"	14, "
1	"	"	"	13,	"	brig	John Dutton,	"	20, "
112	"	"	"	14,	"	"	Crocus,	"	21, "

—are, to the best of my knowledge and belief, truly and bona fide of the production and manufacture of the United States, and that they were truly exported and imported as therein expressed, and

I hereby protest against paying any duties upon them or the valuation placed upon them in the entry. So help me God.

CHA'S BELCHER.

Sworn to the 21st day of April, 1854, before me—

Entry of 1,969 barrels at New Orleans per bark Franklin, May 19, 1853, and affidavit thereto, and protest at St. Louis, 21 April, 1854, and entry at St. Louis, with papers attached.

Entry of Merchandise imported by Ch's Belcher & Co., in the bark Franklin, whereof Mitchell is master, from Matanzas, Cuba, for warehouse and for transportation in bond to St. Louis.

NEW ORLEANS, *the day of May*, 1853.

Marks.	Nos.	Packages and contents.	Quantities.	Per cent.	Total.
B & B M	63				
B ⅃ B 4	105				
" 5	38				
" 6	321	Fifteen hundred and sixty-nine bbls. conc'nt'd Melado green sugar.	740,042 lbs...	$12,025.5½	
" 7	130				
" 8	144				
" 9	133				
" 10	206				
" 11	228				
" 12	161				
" 14	20				
	1,569	Bbls.			
M T					
B ⅃ B 4	1				
" 5	3				
" 6	14				
" 7	7				
" 8	6				
" 9	6	Fifty-one bbls. Melado dry tips.	222,15 lbs	$444.2½	
" 10	2				
" 11	4				
" 12	2				
B & B M T	6				
	51	Bbls.			
B and B C M	17				
B ⅃ B 4 M	2				
" 6 "	9				
" 8 "	2	Three hundred and forty-nine bbls. conce'd molasses.	164,540 lbs...	$1,645.3	
" 9 "	2				
" 10 "	52				
" 11 "	14				
" 12 "	17				

Entry of Merchandise—Continued.

Marks.	Nos.	Packages and contents.	Quantities.	Per cent.	Total.
B ⅃ B 13 M " " 14 "	2 232	⎫ ⎭			
	349				
			Packages.....	2,953.4	
			Charges.....	1,582.1½	
					18,651.0½
			Commissions...	2½ per cent.	466.2
					$19,117.2½

19th May, 1853.

H. R.

I, W. B. Freligh, agent, do solemnly, sincerely and truly swear that the barrels marked and numbered as follows—

108 bbls. B ⅃ B 4 were exported from New Orleans to Matanzas, per Emeline, Mch. 19th, 1853.

61	"	"	5	"	"	Crocus,	"	21,	"
344	"	"	6	"	"	Jane Doten	"	26,	"
137	"	"	7	"	"	Rainbow,	"	29,	"
141	"	"	8	"	"	Almira,	"	30,	"
152	"	"	9	"	"	Broome,	Apl.	2,	"
260	"	"	10	"	"	Catharine,	"	8,	"
246	"	"	11	"	"	Franklin,	"	14,	"
180	"	"	12	"	"	Alnah,	"	14,	"
2	"	"	13	"	"	Crocus,	"	21,	"
252	"	"	14	"	"	Crocus,	"	28,	"

—mentioned in the entry hereto annexed, are, to the best of my knowledge and belief, truly and bona fide of the product and manufacture of the United States, and that they were truly exported and imported as therein expressed, and that no drawback, bounty or allowance has been paid or admitted thereon or any part thereof. So help me God.

W. B. FRELIGH.

Before me, this the 23d day of May, 1853.

J. W. HINCKS, *D. C.*

Entry of Merchandise withdrawn from warehouse, constructively warehoused, which was brought into this district by Belcher & Bro., from the port of New Orleans, on the day of , 185 .

CUSTOM-HOUSE, PORT OF ST. LOUIS,
21*st Ap'l*, 1854.

Marks.	Nos.	Packages and contents.	Quantity.	30 per cent.	Total.
B & B M	63	Fifteeen hundred and sixty-nine bbls. con'cd Melado green sugar.	740,042 lbs.....	12,025.5½	
B ↓ B 4	105				
" 5	58				
" 6	321				
" 7	130				
" 8	144				
" 9	133				
" 10	206				
" 11	228				
" 12	161				
" 14	20				
	1,569				
M T		Fifty-one bbls. Melado dry tips.	22,215.....	444.2	
B ↓ B 4	1				
" 5	3				
" 6	14				
" 7	7				
" 8	6				
" 9	6				
" 10	2				
" 11	4				
" 12	2				
B & B M T	6				
	51	Bbls.			
B & B C M	17	Three hundred and forty-nine bbls. conc'd mol's.	164,540.....	1,645.3	
B ↓ B 4 M	2				
" 6 "	9				
" 8 "	2				
" 9 "	2				
" 10 "	52				
" 11 "	14				
" 12 "	17				
" 13 "	2				
" 14 "	232				
	349				

Packages.....	2,953.4
Charges.....	1,582.1½
	18,651.0½

Com's 2½ p. c.	466.2	
	19,117.2½	
Add 87½ per 500 lbs. on 1,969 bbls. a 2 rs.	287.7½	
Export duty on 1,645 40	1,192.2	
Com's 2½ p. c. on $780	14.4	
	19,910.0	
Dollars 19,478, a 30 p. c.		$5,843 40

We protest against paying duties as assessed on this entry, so far as the value of the packages mentioned therein is included in the computation of the same, for the reasons and on the grounds set forth in our entry and protest, made March 28th, 1854.

BELCHER & BROTHER.

April 21st, 1854.

I, Charles Belcher, do solemnly, sincerely, and truly swear that the barrels marked and numbered as follows, and mentioned in the entry hereto annexed, and which were exported from New Orleans to Matanzas by the vessels and at the dates herein specified, viz:

108	bbls.	mkd.	B ⊥ B	4,	pr. Emeline,	Mch.	19th, 1853.
61	"	"	"	5,	" Crocus,	"	21, "
344	"	"	"	6,	" Jane Doten,	"	26, "
137	"	"	"	7,	" Rainbow,	"	29, "
152	"	"	"	8,	" Almira,	"	30, "
141	"	"	"	9,	" Brown,	April	2, "
260	"	"	"	10,	" Catharine,	"	8, "
246	"	"	"	11,	" Franklin,	"	12, "
180	"	"	"	12,	" Alnah,	"	14, "
2	"	"	"	13,	" Jno. Dutton,	"	20, "
252	"	"	"	14,	" Crocus	"	21, "

—are, to the best of my belief and knowledge, truly and bona fide of the production and manufacture of the United States, and that they were truly exported and imported as herein expressed, and that no drawback, bounty, or allowance has been paid or admitted thereon, and I hereby protest against paying any duties upon them or the valuation placed on them in the entry. So help me God.

CHAS. BELCHER.

Sworn to this 21 day of April, 1854, before me.

I also protest against paying duties on the 86 bbls. marked B & B mentioned in the entry, which barrels were exported from New Orleans to Matanzas in 1852, but the particular conveyance and date of export I am not able to designate, or on the valuation placed on them in the entry.

CHAS. BELCHER.

Entry at New Orleans of 956 barrels by brig John Dutton, June 6th, 1853, and affidavit thereto, and protest at St. Louis, 25th April, 1854, and entry at St. Louis, with papers attached.

Entry of Merchandise imported by Chas. Belcher & Co., in the American brig John Dutton, whereof Burkett is master, from Matanzas, for warehouse, and transportation in bond to St. Louis.

NEW ORLEANS, *the 6th day of June*, 1853.

Marks.	Nos.	Packages and contents.	Quantities.	Per cent.	Total.
B & B M.....	78	Ten hundred and sixteen barrels concentrated Melado green sugar.	488,932 lbs....	8,556.2½	
B ⅃ B 3 M	1				
" 4 "	20				
" 5 "	17				
" 6 "	20				
" 7 "	25				
" 8 "	3				
" 9 "	42				
" 10 "	89				
" 11 "	110				
" 12 "	30				
" 13 "	120				
" 14 "	220				
" 15 "	241				
	1,016				
B & B ..... M T	2	Twenty bbls. Melado dry tips.	8,841 lbs....	176.6½	
B ⅃ B 6 M T	1				
" 9 "	2				
" 10 "	2				
" 11 "	4				
" 12 "	2				
" 14 "	5				
" 15 "	2				
	20				
			1,036 bbls.....	1,554	
			Charges.....	1,002.6	
			Com's.....	282.2	
					11,572.1

I, W. B. Freligh, agent, do solemnly, sincerely, and truly swear, that the barrels marked and numbered as follows, say—

1 bbl.	B ⅃ B	3	were exptd.	from N. Orls.	to Matanzas	pr. John Dutton,	Mch. 5th,	1853.
20 "	"	4	"	Emeline,	"	19,	"	
17 "	"	5	"	Crocus,	"	21,	"	
21 "	"	6	"	Jane Doten,	"	26,	"	

25 bbls.	B ¼ B	7	per	Rainbow,	Mch. 29,	1853.
3 "	"	8	"	Almira,	" 30,	"
44 "	"	9	"	Broome,	Apl. 2,	"
91 "	"	10	"	Catharine,	" 8,	"
114 "	"	11	"	Franklin,	" 14,	"
32 "	"	12	"	Alnah,	" 14,	"
120 "	"	13	"	Crocus,	" 21,	"
225 "	"	14	"	"	" "	"
243 "	"	15	"	Emeline,	" 25,	"
956						

—mentioned in the entry hereto annexed—are, to the best of my knowledge and belief, truly and bona fide of the produce and manufacture of the United States, and that they were truly exported and imported as therein expressed, and that no drawback, bounty or allowance has been paid or admitted on any part thereof, and protest against paying duties on the same. So help me God.

W. B. FRELIGH.

Before me this the 6th day of June, 1853.

J. W. HINCKS, *D. C.*

Entry of Merchandise withdrawn from warehouse, constructively warehoused, which was brought into this district by Belcher & Bro., from the port of New Orleans, on the day of , 185 .

CUSTOM-HOUSE, PORT OF ST. LOUIS,
25*th of Apl.*, 1854.

Marks.	Nos.	Packages and contents.	Quantity.	30 per cent.	Total.
B & B M	78	Ten hundred and sixteen barrels concentrated Melado green sugar.	488,932....	$8,556.21½	
B ¼ B 3 M	1				
" 4 "	20				
" 5 "	17				
" 6 "	20				
" 7 "	25				
" 8 "	3				
" 9 "	42				
" 10 "	89				
" 11 "	110				
" 12 "	30				
" 13 "	120				
" 14 "	220				
" 15 "	241				
	1,016				
B & B M T	2	Twenty barrels Melado dry tips.	8,841.....	176.6½	
B ¼ B 6 M T	1				
9	2				
10	2				
11	4				

Entry of Merchandise—Continued.

Marks.	Nos.	Packages and contents.	Quantities.	30 per cent.	Total.
B ⊥ B 12 M T	2				
14	5				
15	2				
	20		1,036 bbls.	1.554	
			Charges	1.002.6	
			Com's.....	282.2	
				11,572.1	
				$11,731 a 30 per cent...	$3,519 30

I, Charles Belcher, do solemnly, sincerely and truly swear that the barrels marked and numbered as follows, and mentioned in the entry hereto annexed, and which were exported from New Orleans to Matanzas by the vessels and at the date herein specified, viz:

1	bbl.	mkd.	B ⊥ B	3	per	brig	John Dutton,	Mch. 5th,	1853.
20	"	"	"	4	"	"	Emeline,	" 19,	"
17	"	"	"	5	"	"	Crocus,	" 21,	"
21	"	"	"	6	"	bark	Jane Doten,	" 26,	"
25	"	"	"	7	"	b'g	Rainbow,	" 29,	"
3	"	"	"	8	"	bk.	Almira,	" 30,	"
44	"	"	"	9	"	b'g	Broome,	Apl. 2,	"
91	"	"	"	10	"	bk.	Catharine,	" 8,	"
114	"	"	"	11	"	"	Franklin,	" 12,	"
32	"	"	"	12	"	"	Alnah,	" 14,	"
120	"	"	"	13	"	b'g	John Dutton,	" 20,	"
225	"	"	"	14	"	"	Crocus,	" 21,	"
243	"	"	"	15	"	"	Emeline,	" 25,	"

—are, to the best of my knowledge and belief, truly and bona fide of the production and manufacture of the United States, and that they were truly exported and imported as herein expressed, and that no drawback, bounty or allowance has been paid or admitted thereon; and I hereby protest against paying any duties on them, or the valuation placed upon them in the entry. So help me God.

CHAS. BELCHER.

Sworn to this 25th day of April, 1854, before me.

WILLIAM A. LINN,
Surveyor and Inspector.

I also protest against paying duties on the 80 barrels marked B & B, mentioned in the entry hereto annexed, which barrels were exported to Matanzas from New Orleans, during the year 1852,

but the particular conveyance and date of export I am not able to designate, and which barrels are also of American production and manufacture, or on the valuation placed upon them in the entry.

CHAS. BELCHER.

Also read in evidence the following protests in possession of defendant:

WM. A. LINN, Esq.,
Surveyor of Customs, St. Louis.

SIR; We pay the duties demanded from us by you upon 102 hhds. and 209 bbls. concentrated molasses, imported by us from Matanzas, Cuba, per sch. Charles Henry, and entered at New Orleans May 10th, 1853, and upon 128 hhds. and 1,200 bbls. concentrated molasses, imported by us from Matanzas, per bark Catharine, and entered at New Orleans May 18th, 1853, and upon 1,035 bbls. concentrated molasses, imported by us from Matanzas, per brig Emeline, and entered at New Orleans June 6th, 1853, under this our formal protest against the correctness, legality and justice of that demand.

We hereby protest against the including in the computation of the dutiable value of the goods before mentioned, of any sum whatever for export duty upon said goods, no export duty having been paid to or demanded by the Cuban authorities on the exportation of the said goods; and against the payment of duties on the sum of $2,688, added by the U. S. general appraisers to the costs and charges on said goods, as for such export duties thereon; and against the payment of duties on the same of $626, added by the U. S. general appraisers to the costs and charges on said goods, as an additional charge for the costs or value of 2,444 barrels, on the ground that such additions are wholly unauthorized by law, and are contrary to the true meaning of the acts of Congress regulating the appraisement of imported merchandise, and are contrary to the true meaning of the acts of Congress regulating the appraisement of imported merchandise and the assessment of duties thereon; and also, on the ground that the board of general appraisers had no power as an appellate tribunal, under the acts of Congress, or by virtue of any agreement on our part, to make the addition of export duties, inasmuch as no such charge on said goods was made by the custom-house appraisers at New Orleans, nor was any question as to the liability of said goods to such charge involved in the original appraisement of said goods, or in our appeal therefrom; and also, on the ground that the actual market value at the place of export of the packages was given in the invoices and entries, the barrels being charged in the same at the customary price and at their relative value, as compared with other packages. And we also hereby protest against the computation

of duties upon a greater amount of goods than we have received from the hands of the custom-house officers at New Orleans, and against the payment of duties on the sum of $2,451, that being the computed dutiable value of 154,705 pounds of concentrated molasses, which amount was lost by leakage and drainage, while the aforesaid goods were withheld from our possession by the custom-house authorities at New Orleans, viz: from the time of their entry until November 1st, on the ground that the true meaning of acts of Congress regulating the computation and collection of duties on imported merchandise authorizes the imposition of duties only on such goods as pass through the custom-house; on such merchandise only as delivered by the custom-house authorities into the hands of importers; and also, because the said detention was without our consent and without just cause; and though, to obtain our goods and to release the bonds given for the payment of duties thereon, we pay the duties as demanded, yet so far as such duties have been collected on the aforesaid addition for export duties, on the aforesaid additional charge for cost of barrels, and on the value of the quantity of said goods that exceeded the quantity delivered to us from the custody of the New Orleans custom-house, we pay the same under this protest, and we hereby notify you that we shall bring an action against you to recover the full amount so illegally exacted, with interest thereon.

(Signed) BELCHER & BROTHER.

St. Louis, Mo., March 17th, 1854.

WM. A. LINN, Esq.,
Surveyor of Customs, St. Louis, Mo.

SIR: We pay the duties demanded from us by you, upon 1,569 bbls. concentrated Melado, 51 bbls. sugar, and 349 bbls. concentrated molasses, imported by us from Matanzas, Cuba, per bark Franklin, and entered at New Orleans May 19th, 1853, and upon 197 hhds. and 23 bbls. sugar, 272 bbls. concentrated Melado, and 140 bbls. concentrated molasses, imported by us from New Orleans May 18th, 1853, under this our formal protest against the correctness, legality and justice, of that demand.

We hereby protest against the including in the computation of the dutiable value of the concentrated molasses above mentioned, of any sum whatever for export duty upon said goods, no export duty having been paid to or demanded by the Cuban authorities on the exportation of the said goods; and against the payment of duties on the sum of $293, added by the U. S. general appraisers to the costs and charges on said goods, as for such export duties thereon; and against the payment of duties on the sum of $616, added by the U. S. general appraisers to the costs and charges on said goods as an additional charge for the cost or value of 2,404 barrels, on the ground that such additions are wholly unauthor-

ized by law, and are contrary to the true meaning of the acts of Congress regulating the appraisement of imported merchandise, and the assessment of duties thereon; and also on the ground that the board of general appraisers had no power as an appellate tribunal under the acts of Congress or by virtue of any agreement on our part, to make the addition of export duties, inasmuch as no such charge on said goods was made by the custom-house appraisers at New Orleans, nor was any question as to the liability of said goods to such charge involved in the original appraisement of said goods, or in an appeal therefrom; and also on the ground that the actual market value at the place of export of the packages was given in the invoices and entries, the barrels being charged in the same at the customary prices and at their relative value as compared with other packages; and we also hereby protest against the computation of duties upon a greater amount of goods than we have received from the hands of the custom-house officers at New Orleans, and against the payment of duties on the sum of $2,406, that being the computed dutiable value of 17,230 pounds sugar, 62,385 pounds concentrated Melado, and 42,575 pounds concentrated molasses, which amount was lost by leakage and drainage, while the aforesaid goods were withheld from our possession by the custom-house authorities at New Orleans, on the ground that the true meaning of the acts of Congress regulating the computation and collection of duties on imported merchandise authorizes the imposition of duties only on such goods as pass through the custom-house; on such merchandise only as is delivered by the custom-house authorities into the hands of the importers, and also because the said detention was without our consent and without just cause; and though to obtain our goods and release the bonds given for the payment of duties thereon, we pay the duties as demanded, yet so far as such duties have been collected on the aforesaid addition for export duties, on the aforesaid additional charge for cost of barrels, and on the value of the quantity of said goods that exceeded the quantity delivered to us from the custody of the New Orleans custom-house, we pay the same under this protest, and we hereby notify you that we shall bring an action against you to recover the full amount so illegally exacted, with interest thereon.

(Signed) BELCHER & BROTHER.

St. Louis, Mo., April 21st, 1854.

WM. A. LINN, Esq.,
Surveyor of Customs, St. Louis, Mo.

SIR: We pay the duties demanded from us by you upon 1,016 bbls. concentrated Melado and 20 bbls. sugar, imported by us from Matanzas, Cuba, per brig John Dutton, and entered at New Orleans June 6th, 1853, under this our formal protest against the cor-

rectness, legality and justice of that demand. We hereby protest against the payment of duties on the sum of $265 added by the U. S. general appraisers to the costs and charges on said goods, as an additional charge for the cost or value of 1,036 barrels, on the ground that such addition is wholly unauthorized by law, and is contrary to the true meaning of the acts of Congress regulating the appraisement of imported merchandise and the assessment of duties thereon, and also on the ground that the actual market value of the place of export of the packages was given in the invoice and entry, the barrels being charged at the customary price, and at their relative value as compared with other packages; and we also hereby protest against the computation of duties upon a greater amount of goods than we have received from the hands of the custom-house officers at New Orleans, and against the payment of duties on the sum of $1,112, that being the computed dutiable value of 1,285 pounds of sugar, and 45,425 pounds of concentrated Melado, which amount was lost by leakage and drainage while the aforesaid goods were withheld from our possession by the custom-house authorities at New Orleans; on the ground that the true meaning of the acts of Congress regulating the computation and collection of duties on imported merchandise authorizes the imposition of duties only on such goods as pass through the custom-house, or such merchandise only as is delivered by the custom-house authorities into the hands of the importers, and also because the said detention was without our consent and without just cause; and though to obtain our goods and release the bonds given for the payment of duties thereon, we pay the duties as demanded, yet so far as such duties have been collected on the aforesaid additional charge for cost of barrels, and on the value of the quantity of said goods that exceeded the quantity delivered to us from the custody of the New Orleans custom-house, we pay the same under this protest, and we hereby notify you that we shall bring our action against you to recover the full amount so illegally exacted, with interest thereon.

(Signed) BELCHER & BROTHER.

St. Louis, Mo., April 25th, 1854.

The defendant then moved the court to exclude any further evidence on the part of the plaintiff, on the ground that the protests were insufficient; but the court refused so to do, to which decision of the court the defendant then and there excepted.

The plaintiffs then read in evidence the deposition of Benjamin F. Tisdale, with the exhibits thereto annexed, as follows:

In the Circuit Court of the United States for the district of Missouri.

WILLIAM H. BELCHER and CHARLES BELCHER, Plff's,
versus
WILLIAM A. LINN, Def't.

Interrogatories to be propounded on the part of the plaintiffs to Benjamin F. Tisdale.

1st. In whose employment and in what occupation were you during the years 1852 and 1853?

2d. Do you know anything of the exportation by the plaintiffs, or their agents, of any molasses barrels from New Orleans during those years to Matanzas?

3d. If yea, state the number and quantity of such barrels exported by plaintiffs on their agents to Matanzas in those years, the date of export, the vessels in which they were exported, the number of barrels, with their marks, exported in each vessel.

4th. State where said barrels came from, of what production and manufacture they were, and in what condition they were when exported—whether ready for use or otherwise.

5th. Do you know anything of the return into the United States of the barrels or any of them mentioned in your answer to the 3d interrogatory? If so, state by what vessels, at what ports, at what dates returned, and the number and marks of said barrels brought by each vessel.

6th. State whether or not the said barrels were in the same condition when brought back to the United States as they were when exported from it.

Cross-interrogatories to be propounded on behalf of Defendant to Benjamin F. Tisdale.

To 2d, 3d, and 4th interrogatories. Please distinguish carefully in your answers what you know of your own personal knowledge, and what you derive from other sources, and what those sources are.

To 5th and 6th interrogatories. 1. Please answer in relation to this interrogatory the above cross-interrogatory.

2. How do you know (if you so state) that the barrels returned to the United States are the same which you mention as exported to Matanzas?

To plaintiffs' interrogatories. Benjamin F. Tisdale having been duly sworn as aforesaid, answers:

To the first. During the years 1852 and 1853 I was constantly in the employment of Chas. Belcher & Co., New Orleans, as their book-keeper.

To the second. I do know of the exportation by plaintiffs through their agents here of certain molasses barrels to Matanzas, in 1852 and 1853.

To the third. In 1852 they exported to Matanzas 12,531 (twelve thousand five hundred and thirty-one) barrels, no mark thereon; and in 1853, 29,398 (twenty-nine thousand three hundred and ninety-eight) barrels, marked "B & B," as is fully and in detail

set forth in Statement X (in red ink) hereto annexed, which is a complete table of exports.

To the fourth. These barrels came into Chas. Belcher & Co.'s hands as follows: 1,045 (ten *thousand* and forty-five) were received from Belcher & Bro. of St. Louis, and 31,884 (thirty-one thousand eight hundred and eighty-four) were purchased by Chas. Belcher & Co. from different parties, coopers and other persons here in New Orleans. They were all of American production and manufacture, and when exported were ready for use, some being filled with water to serve as ballast to the vessels which Chas. Belcher & Co. then had under freight and charter, and others empty, and were denominated "empty barrels" in the export manifest.

To the fifth. The barrels mentioned in my foregoing answer were returned into the United States from Matanzas in the vessels, to the number and at the dates set forth in detail in Statement X (red) already produced.

To the sixth. These barrels when brought back to the United States from Matanzas were filled with the products of Belcher & Bro.'s boiling establishment at that place, viz: concentrated molasses, concentrated Melado and sugar-house molasses, but otherwise they were in the same condition as when exported, so far as I know.

B. F. TISDALE.

To defendants' cross-interrogatories, Benjamin F. Tisdale answers:

As to 2d, 3d, and 4th interrogatories. I am personally aware that the barrels were exported by Chas. Belcher & Co. to Matanzas in 1852 and 1853. I was generally present when the bills of lading were signed by the captains of the vessels, and I did much of the work necessary to prepare the clearance papers for the custom-house. The table X, which I have submitted in explanation of my answers, was compiled by me from the receipts of the vessels for the barrels from the bills of lading duly signed by the captains of the vessels, and from the report of the warehouse man at the warehouse in the 3d district, rented by Chas. Belcher & Co., and in which nearly all these barrels were temporarily placed and prepared for shipment. I checked the several bills presented for payment for the barrels bought by Chas. Belcher & Co. from receipts showing our possession and control of the barrels at the time.

As to 5th and 6th interrogatories. Answers to cross-interrogatories thereon:

1. I only know that the vessels named in the table X brought certain barrels, as therein shown, from the Matanzas establishment, and I am of the belief that they were the same barrels as had been exported by Chas. Belcher & Co., because, first, 29,398

of them bore the test mark adopted in 1853, viz: "B ⅃ B and number;" and, secondly, the Matanzas establishment had no need of buying barrels, (if, indeed, they could have gotten them at Matanzas,) as Chas. Belcher & Co. here supplied all they wanted and more than they wanted, as shown in the table of exports X.

2. I do not personally know that the barrels returned to the United States were the same as had been exported to Matanzas, but they were represented to be the same by the agents of Mess. Belcher & Bro.'s Matanzas establishment, looked like the same, were declared to be the same by Chas. Belcher & Co. under oath, in the custom-house, at New Orleans, and, as already stated, 29,398 of them bore the test mark "B ⅃ B" No. 1 to 29, as shown in table X. I may moreover add that in no account of the Matanzas establishment which came under my eye for examination was there any mention of a purchase of barrels at Matanzas.

B. F. TISDALE.

[*See Table marked X, opposite.*]

The plaintiffs then read in evidence the deposition of John W. Hincks, with exhibits thereto, as follows:

Hincks.

Interrogatories to be propounded to David O. Hincks or J. *M.* Hincks, New Orleans.

First. Please state what position (if any) you held in the custom-house at New Orleans in the years 1852 and 1853.

Second. Please state whether or not the plaintiffs, in the years 1852 and 1853, exported any molasses barrels from the port of New Orleans to Matanzas, in Cuba; and, if yea, how were they exported—that is, as the production and manufacture of what country—their marks, with dates and vessels of exportation?

Third. Please examine the records of the office, and state whether or not the plaintiffs or their agents made any exportations of barrels with marks, by vessels and at dates as follows:

B ⅃ B	No. 3,	pr.	brig	John Dutton,	March 5th,	1853.
"	4,	"	"	Emeline,	" 19,	"
"	5,	"	"	Crocus,	" 21,	"
"	6,	"	barque	Jane Doten,	" 26,	"
"	7,	"	brig	Rainbow,	" 29,	"
"	8,	"	barque	Almira,	" 30,	"
"	9,	"	brig	Broome,	Ap'l 2,	"
"	10,	"	barque	Catharine,	" 8,	"
"	11,	"	"	Franklin,	" 12,	"
"	12,	"	"	Alnah,	" 14,	"
"	13,	"	brig	John Dutton,	" 20,	"
"	14,	"	"	Crocus,	" 21,	"

B ¼ B	No. 15,	per	brig	"Emeline,"	April	25th,	1853.
"	"	16	"	barque	"Jane Doten,"	May	4th,	"
"	"	17	"	"	"Almira,"	"	6th,	"
"	"	18	"	brig	"Broome,"	"	11th,	"
"	"	19	"	"	"Crocus,"	"	23,	"
"	"	20	"	barque	"Catharine,"	"	26,	"

Fourth. Please examine entries as follows, (if you find such:)

Per brig	"Rainbow".....	May	2d, 1853.
" barque	"Alnah"	"	9, "
" schooner	"Charles Henry".....	"	10, "
" barque	"Catharine".....	"	18, "
" brig	"Crocus".....	"	" "
" barque	"Franklin"	"	19, "
" brig	"Emeline"	June	6, "
" "	"John Dutton"	"	" "
" "	"Rainbow"	"	29, "

—and state what claim or statement (if any) was made by the importers, respecting the barrels included in the importations mentioned last above, as to their national production and place of manufacture, and their liability to duty?

To plaintiffs' interrogatories John W. Hincks aforesaid, having been duly sworn as aforesaid, answers:

To the first. In 1852 and 1853 I was a deputy collector of the customs in this city, and I am still in that position.

To the second. Plaintiffs did at that time export certain molasses barrels to Matanzas, representing said barrels as of American manufacture and production. The statement annexed to and made part of this answer as document A A will show the marks and Nos. on said barrels, the names of the vessels by which they were exported, and the date of exportation, &c.

To the third. I have examined the records of the office, and find that the plaintiffs' agents did make such exportations of barrels as are alluded to in this interrogatory. Document A A, already produced, will explain my answer in detail.

To the fourth. I have examined the entries referred to, and find that the agent of the importers stated and claimed that the barrels mentioned in the entries were of American production and manufacture, shipped from this port to Matanzas, and thence returned in the same condition, (apart from their contents;) and that they were not liable or subject to import duty, as is more particularly shown on the statement marked A, which I have annexed to my answer to the second interrogatory on the subject of the entries made by plaintiffs in May–June, 1853.

And to defendants' cross-interrogatories the said John W. Hincks answering, says:

As to 2d and 3d, I have no personal knowledge of the matters alluded to in these interrogatories, and derive the information given in my answers solely from the records of the custom-house spoken of.

As to 4th, I know nothing of the identity of the barrels.

J. W. HINCKS.

Exhibit in Hincks's Deposition.

Statement of empty Molasses Hhds. and Barrels, exported by Chas. Belcher & Co. to Matanzas.

Name of vessel.	When exported.	Marks.	Numbers.	Hhds.	Bbls.
Brig John Dutton	Mch. 5, '53,	B ⅃ B	3	.....	856
" " "	" " "	B & B	.....	52	.....
Brig Emeline.....	" 19, "	"	.....	30	.....
" "	" " "	B ⅃ B	4	.....	1,202
" Crocus.....	" 21, "	"	5	.....	1,250
	" " "	B & B	.....	20	.....
Bark Jane Doten...	" 26, "	B ⅃ B	6	.....	1,130
" Rainbow.....	" 29, "	"	7	.....	1,372
Bark Almira.....	" 30, "	"	8	.....	968
Brig Broome.....	Ap'l 2, "	"	9	.....	1,062
Bark Catharine.....	" 8, "	"	10	.....	1,832
" Franklin.....	" 14, "	"	11	.....	1,900
" Alnah.....	" " "	"	12	.....	1,375
Bg. Jno. Dutton...	" 20, "	"	13	.....	1,150
" Crocus.....	" 21, "	"	13 or 14	.....	1,300
" Emeline.....	" 25, "	"	15	.....	1,300
Bk. Jane Doten....	May 4, "	"	16	.....	1,000
" Almira.....	" 6, "	"	17	.....	950
Bg. Broome.....	" 11, "	"	18	.....	1,000
" Crocus.....	" 23, "	"	19	.....	1,000
Bk. Catharine.....	" 26, "	"	20	.....	600

The empty molasses barrels included in the above manifest are of American production and manufacture, and are exported with the intent to return the same to this port.

The plaintiffs then read the deposition of T. A. Ritchie, as follows:

Interrogatories to be propounded on the part of plaintiff to Thomas A. Ritchie, or Joseph Lallier.

1st. State where you resided in 1852 and 1853; what was your occupation, and its special duties?

2d. Have you any knowledge of the business transactions between Drake & Co., of Matanzas, and the plaintiffs in this suit? If so, state what was the nature of those transactions during the years 1852 and 1853.

3d. Were there any *exportions* from Matanzas, in the island of Cuba, made by Drake & Co. in 1853 to the plaintiffs in the United States? If so, state what the exportations from that port consisted in, in what vessels, and at what dates were they exported, who were the owners of the merchandise so exported; and if any portion of said merchandise was exported in barrels, state the number and marks of barrels that were so used in each vessel, and the time of such exportation; state the same fully and particularly.

4th. If you state that any portion of said merchandise was exported in barrels, state where those barrels came from; and if any were brought into the port of Matanzas, state their condition when brought into the said port; and if any change of condition was made in said barrels while in said Matanzas, state what it was, if any such change was made.

5th. State at what times, in what vessels, and from what port or ports such barrels were brought into Matanzas, and specify the number of barrels and their marks brought by each vessel.

Cross-interrogatory for defendant to each of the above interrogatories.

Please state what you know of your own knowledge, and what you derive from other sources of information, and what those sources are, or were, and the value of such barrels at Matanzas.

Agreement.

The above interrogatories and cross-interrogatories are to be propounded, as above, all objections being waived as to form, but reserving all just objections to the competency or relevancy or sufficiency of the replies thereto.

KASSON,
With whom is SHEPLEY,
For Pl'ffs.

THOS. C. REYNOLDS,
U. S. Dist. Att'y for Deft.

In the U. S. Circuit Court.

WILLIAM H. BELCHER et al.
vs.
WILLIAM A. LINN.
No. 2.

Answers of Thomas A. Ritchie, esq., to the interrogatories in the above cause appended to the letters rogatory therein, dated March 6th, 1855.

To the first interrogatory. I resided at Matanzas; I occupied a

desk in the house of Drake & Co., but was not then a member of the firm, but had free access to their books and a general knowledge of all their transactions. I acted in their house as agent of my friends in the British provinces, whose business was done by me through Drake & Co.

To second interrogatory. I have such knowledge; Drake & Co., in those years, acted as general agents for the plaintiffs, had the general charge of their sugar-boiling establishment at Matanzas, made all the purchases of the raw material for their factory, received all the materials sent out by the plaintiffs for that factory, and shipped all the products of the same.

To the third interrogatory. There were such exportations; said exportations consisted in sugar in hogsheads, boxes and barrels; in concentrated Melado, concentrated molasses, sugar-house molasses and reboiled molasses; the sugar in boxes, and a considerable portion of that in hhds., was bought in the market; the remainder was the product of the plaintiffs' factory, and was in amount and packages as follows:

1853.— 1,296 hhds.	Sugar.
123 bbls.	
1,301 hhds.	Concentrated Melado.
7,169 bbls.	
2,501 hhds.	Concentrated molasses.
16,948 bbls.	
503 bbls.	sugar-house molasses.
62 bbls.	reboiled molasses.

For a detailed statement of particulars respecting that portion shipped in barrels, I append a table marked A. All those made by Drake & Co. in that year were for account of the plaintiffs.

To the fourth interrogatory. All these barrels were received by Drake & Co. from New Orleans, for account of the plaintiffs. Their condition when brought into Matanzas was that of molasses barrels ready for use, and there was no change of condition more than necessary to fill them with the articles exported in them; they came empty, and were exported full.

To fifth interrogatory. For the answer to this question, I refer to table annexed marked B.

Answers to Cross-interrogatories.

My answers to 1st and 2d, I know from my own knowledge; with regard to my other answers, I know that the vessels named in the table B arrived at or about the dates therein stated at Matanzas, with clearances, bills of lading, invoices, and correspondence from New Orleans. The precise dates of their arrivals I take from the books of Drake & Co. The vessels named in the table A, I know, from my own knowledge, left this port at or about the dates there-

in stated. The precise dates therein stated I take from the books of Drake & Co. I know that the vessels mentioned in the table B as bringing barrels, brought barrels, from having seen them landed. I saw those same barrels filled with the products of the factory; I saw them thus fill, put into launches to go on board the vessels mentioned in the table A; the number of those barrels I thus saw I cannot state; the precise number of barrels received, as stated in the table B, and the ships they came in, I take from the books of Drake & Co., the entries in which at the time were made from the receipts given by the clerk or storekeeper at the plaintiffs' factory. I take the number of barrels as specified in table A, with their marks and numbers, the vessels and dates of shipment, from the books of Drake & Co.; the entries in those books were made at the time from the written returns made by the weighing clerk at the factory of the plaintiffs, and from the receipts given by the captains to the patroons of the launches. I know in addition that Drake & Co. had the whole management of the plaintiffs' affairs here. I am sure that no barrels could have been bought for the use of the factory without my knowledge. I never saw any of those barrels put from the vessels into the launches, as the vessels discharg*ing* their cargoes into launches in the bay about three-quarters of a mile to a mile from the shore; but I have sent empty launches off to the vessels, and have seen them return loaded with barrels. I did not superintend the delivery of the barrels from the launches at the factory, or the counting of them. I cannot say I saw all the barrels landed stated in table B, but I probably saw most of them. I say the same about those shipped, though it is likely that I noticed more of those shipped than of those received, as they were usually shipped either in the morning or evening, when I was generally there. The receipts of the storekeeper, which I have mentioned, I do not know if they are now in existence. The receipts of the captains above mentioned were given to them respectively on their signing the bills of lading. The value of those barrels at Matanzas, at that time, was from one dollar to one dollar and a quarter each.

THOS. A. RITCHIE.

Devine.

The plaintiffs then read the deposition of John Devine, as follows:

Interrogatories to be propounded on the part of plaintiff to John Devine, (Matanzas,) in case of his absence, to William Luber.

1st. Where did you reside in 1852 and 1853, and what was your occupation during those years, and by whom were you employed?

2d. Do you know anything of barrels being filled with the products of the plaintiffs' molasses-boiling establishment during the

months of April, May, and June, of the year 1853? If so, state what became of the barrels and their contents fully and specifically.

3d. Tell where those barrels came from, and the place of production and manufacture, and what marks, if any, they bore.

4th. State whether said barrels were in the same condition when received at the said port of Matanzas, as when exported from it.

5th. If any change in their condition had taken place were you or not in a situation to have known it, and did any change take place, or did they undergo any manufacturing process while in the island of Cuba?

6th. If, in answer to the 1st interrogatory, you state that you are employed in plaintiffs' establishment at Matanzas, state if any portion of the products of said establishment were placed in barrels during the year 1853. If so, where did all the barrels thus used during that year come from, and of what production and manufacture were they, and what became of the barrels and contents?

Cross-interrogatory for defendant to each of the above interrogatories.

Please distinguish what you know of your own knowledge, and what you derive from other sources of information, and what those sources are, or were.

Answers of John Devine to the interrogatories and cross-interrogatories in the above cause, appended to the letters rogatory therein, dated March 6th, 1855.

To first interrogatory. I resided in those years in Matanzas, with exception of the months of August, September, and October, and perhaps parts of July and November, in each year, when I returned to my home in Portland, in Maine. I was employed by Messrs. Belcher & Brother, and had the charge and superintendence of their cooperage connected with their sugar factory at Matanzas. My position was foreman of the cooperage, which I still hold.

To second interrogatory. I do know of barrels being filled with sugar and molasses, the products of the plaintiffs' molasses-boiling establishment, in April, May, and June, 1853; the barrels then filled were filled under my superintendence, and after being filled, were put into launches for the purpose of being loaded on board vessels, and being shipped to New Orleans, with the exception of one cargo and some small lots which I understood were shipped some time in that year to other ports; I suppose they were so shipped.

To third interrogatory. During the year 1852 there were received at the factory of Messrs. Belcher & Brother several thousand molasses barrels, some of which remained in the cooperage unused until 1853, and in that year a much larger number were so received. Most of said barrels I myself saw received; they were

landed at the factory from launches by which they were brought, as I understood and believe, from vessels in the harbor, which, as I also understood and believe, had brought them from New Orleans; said vessels were in most cases vessels which were loaded with the products of the factory, and which sailed, as I have every reason to believe, to New Orleans. Most of the vessels bringing barrels and loading sugar and molasses from the plaintiffs' factory were, as I understood and believed, sailing in plaintiffs' employ between Matanzas and New Orleans. I cannot tell the place of production and manufacture: all I know is, that they were completely manufactured and finished barrels when they were received by me. As regards marks my recollection is, that the barrels received in 1852 had no distinguishing marks; but those in 1853, or most of them, had a mark, an anchor, and I think a B, on each side of it. I do not remember whether there *was* any numbers attached.

To fourth interrogatory. The barrels were empty when they were received at the plaintiffs' factory; when sent from thence they were filled with its different products; otherwise, I know of no change in their condition, except that when a hoop was lost from the barrel it was replaced; the barrels were filled when they contained only molasses reboiled, or sugar-house molasses, by the bung; when the barrels were filled with concentrated molasses, or concentrated melado, or sugar, it was necessary to take out and replace one of the heads, and to do that it was necessary to loosen and replace and drive some of the hoops.

To fifth interrogatory. I was in a situation to know it, as I had the whole charge and control of the cooperage establishment of the plaintiff at Matanzas, and superintended the heading of such barrels as were filled by the head, and had charge of the receiving and delivering of all the barrels and other casks used at the plaintiffs' factory. There was no change except as I have before stated, and they did not undergo any manufacturing process while at the establishment of the plaintiffs. It may possibly have occurred that a stave has been accidentally broken and replaced by a new one, but I do not recollect any instance with regard to the barrels mentioned in this examination.

To sixth interrogatory. A large portion of the products of said establishment were placed in barrels in the year 1853; all the barrels thus used in that year came precisely as I have stated concerning the barrels previously mentioned. No bbls. were made at the cooperage under my charge; and so far as I know, none were brought here for use at the plaintiffs' factory. In regard to the production and manufacture, and what became of the barrels and contents, my answer concerning the barrels previously enquired of will apply to all. These answers apply to the time when I was here in Matanzas; during my absence William Lieber was in charge of the cooperage. The business of the plaintiffs'

factory was about closed for the season each year when I left Matanzas. It is my impression that no barrels were received, and but few shipped, during my two absences mentioned.

To cross-interrogatory. I have done, so far as my recollection serves me.

JOHN DIVINE.

Plaintiffs then read the deposition of William Lieber, as follows:

Answers of William Lieber to the interrogatories and cross-interrogatory in above cause, appended to the letters rogatory therein, dated March 6th, 1855.

To first interrogatory. I was in Matanzas the whole of 1852, and up to the 22d of November, in 1853. My occupation was that of a cooper, and I was employed by Messrs. Belcher & Bro., at their factory at Matanzas, during those years, and am now employed there.

To second interrogatory. I do know of barrels being filled with the products of the plaintiffs' molasses-boiling establishment in those months. I saw most of said barrels put on board launches near the factory, for the purpose, as I understood, of being loaded on vessels in the harbor, bound, as I understood, for New Orleans.

To third interrogatory. A large number of barrels were received by the plaintiffs at their factory in 1852 and 1853; I saw most of them landed at the factory from launches, which I understood brought them from vessels in the harbor, which vessels I understood brought them from New Orleans. I understood and believe, that all the barrels that were received at the factory in those years came from New Orleans, and I understood and believe them to have been made there and at St. Louis; I recognised a portion of the barrels to have been made at St. Louis by their peculiar style, and their having 16 hoops, and on some of those I saw the private marks of workmen that I knew and had worked with at St. Louis. I should estimate the number that I judge to have been made at St. Louis, that were received here, to be several thousand; I have no memorandum of their number. I recollect that the barrels received in 1852 had no shipping-marks. Those received in 1853 were to the best of my recollection all marked, except perhaps a few of the earliest shipments. The marks in 1853 were all the same except the number; each shipment had a different number, commencing with one and going on; the mark was an anchor between the two letter B's. To the best of my recollection this was the invariable mark, with the addition of a separate number for each shipment.

To fourth interrogatory. The barrels were empty when received.

and were filled at the plaintiffs' factory here with its products, when they were sent away; otherwise they were in the same condition when sent off as when received, except occasionally a hoop had been lost, or a stave broken, which had to be replaced. To fill the barrels, and after filling to replace them.

To fifth interrogatory. I was in a situation to have known it. They did not undergo any manufacturing process while at the factory here, except, as above stated, about repairing of those which were injured on the voyage. Of all the barrels received in 1852 and 1853 about one hundred had got their hoops knocked off, and were hooped entirely anew. I cannot say positively whether those barrels were shipped in those months or not; I think some of them were.

To sixth interrogatory. A large portion of the products of the said establishment were placed in barrels in 1853; all the barrels thus used in that year came precisely as I have before stated of the barrels previously mentioned. No barrels were made at the cooperage of the plaintiffs in those years; and, so far as I know, none were bought here. I know no others than those mentioned were used there. In regard to the production and manufacture of said barrels, and what became of them and their contents, my answer concerning the barrels previously inquired of will apply to all. Mr. Divine left Matanzas in July, 1852, and returned November 7th, the same year; he again left in July, 1853, and returned early in November, before I left Matanzas. I had charge of the cooperage during his absence on those two occasions, and some barrels were received and some sent from the factory during those periods; but what I have said as to the barrels received and sent away at other times applies equally to these.

To cross-interrogatory. I have done this to the best of my recollection.

WILLIAM LIEBER.

Ware.

Plaintiffs then called Edward Y. Ware, who testified that he was in the employment of Belcher & Brother, in St. Louis, in 1852, and 1853, and 1854, and had charge of their business except at the refinery; that he had charge of their importations and exportations; William B. Freligh was their agent at New Orleans at that time, and attended to their general business, and entirely attended to their exportations and importations; that he had examined the protests and affidavits made by him in evidence in this case; that he made them as agent of plaintiffs, and had a personal knowledge of the facts stated therein.

On cross-examination he said that when he made the protests one of the members of the firm was in this city; that when he made the affidavits and protests signed by him, that he had no know-

ledge except from recognising the marks on the barrels, that they had been exported or imported, and also from the contents of the barrels; being Cuban products, he knew that they had been exported. The contents were very different from any production of Louisiana. That he was not in New Orleans, and did not see them shipped from Cuba. On re-examination he said that he was well acquainted with the products of Louisiana and the sugar business; that from the mark and style of the barrels he knew these barrels, and from their containing the products of Cuba he knew that they came from Cuba.

The plaintiffs then proved the payment of the duties to the defendant, and that at the same time they delivered to him the protests read in evidence by plaintiffs.

The plaintiffs then read from Mayo's Compilation, Treasury Circular number 75, dated , as follows:

"Casks or hogsheads exported from the United States empty, and returned filled, to be included among the dutiable charges, although of American manufacture, not being in 'the same condition' as when exported, as required by the provisions of Schedule I. of the tariff of 1846, in order to be entitled to exemption."

Also from Treasury Circular No. 67, containing general regulations from the Treasury Department, dated June 1st, 1850, as follows:

"Bags, boxes, casks, or other envelopes, manufactured in the United States of domestic or foreign materials, exported filled or empty, or re-importation into the United States, whether brought back filled or empty, are not liable to duty under the tariff act of 1846, if satisfactorily identified as of American manufacture in the mode prescribed by law, the contents, if dutiable, to be charged with duty on the foreign value of the article in bags, boxes, casks, or other envelopes."

It was admitted by defendant that plaintiffs in 1852, 1853 and 1854, and down to the present time, composed the firm of Belcher & Brother in St. Louis, and Charles Belcher & Co. in New Orleans, and that from July, 1853, to the present time, defendant had been surveyor, acting as collector, of the port of St. Louis.

The plaintiffs here closed their evidence, and thereupon the defendant asked the court to instruct the jury that there was no evidence in this suit that proof had been made, to the satisfaction of the collector at New Orleans, or his deputy, that the barrels mentioned in the entries and affidavits, given in evidence by plaintiffs, had been exported from the United States as of the growth, produce or manufacture thereof; and also to instruct the jury that barrels exported empty from the United States, and afterwards returned filled with sugar or other merchandise, are not returned in the same condition in which they were exported from the United States. But the court refused to give such instructions, or either

of them, to which rulings of the court defendant then and there excepted.

Defendant thereupon offered in evidence the following documents:

NOTE.—Agreement between S. W. Downs, collector of New Orleans, and Belcher & Bro., dated 28th Sept., 1853, is here called for, but cannot be found on file, and the following blank draught of the same is inserted:

"From February to July, inclusive, in 1853, there were imported into the district of New Orleans by Mess. Belcher & Brother, from the island of Cuba, certain cargoes of concentrated molasses and concentrated melado and sugar, which are thus described, and the present situation of which is thus stated in a memorandum from the custom-house in N. Orleans. (Said memorandum is not on file.) Under the peculiar circumstances of these importations, the large amount involved, and the time during which the goods have been necessarily withheld from use, it is stipulated and agreed by the government represented by S. W. Downs, collector of the district of New Orleans, acting under instructions from the Secretary of the Treasury, dated September 20th, 1853, and by the importers, Belcher & Brother, represented by Belcher, a member of the firm, to submit all the cargoes above mentioned to be appraised by the board of general appraisers of the U. States, convened at New York, as soon as may be, on samples of each article sent from New Orleans and certified by the deputy collector of that port, Mr. Hincks, and agent of the importers, Mr. Tindsle, duly authorized for that purpose, and on the invoices, or duly authenticated copies of them, and all the other regular and usual papers connected with said entries as they now stand respectively in the custom-house, and to which, by the affidavits of said board of general appraisers, and on said several cargoes, in the same manner and to the same extent as if it had been made by merchant appraisers regularly appointed according to law; and that it shall be equally binding and on the government and the importers as if so made. This agreement is not to be construed as applying to any other entries except those mentioned, or as changing any existing instructions of the department, or as introducing any new regulation or practice, or to be as a precedent in other cases. It is intended to apply solely to cases stated, and for no other purpose, and not to be applied to any others except at the option of the Secretary of the Treasury.

"In testimony of the which, this agreement is signed by the persons herein above named, in the city of New York, the day of September, 1853.

_____ _____.

_____ _____."

Also, report of George W. Pomeroy, appraiser general, and the schedule thereto annexed.

Note.—Is not on file.

The plaintiffs admitted that said agreement was executed by the plaintiffs and by S. W. Downs, collector of New Orleans, who had authority to make said agreement on the part of the United States, but objected to the reading of said documents, or either of them, as irrelevant.

The court overruled said objection, and permitted the said documents to be read to the jury, to the overruling of which the said plaintiffs then and there excepted.

The defendant then offered to read in evidence to the jury the 1st, 2d, 3d, and 4th interrogatories, and the 8th, 9th, and 12th cross-interrogatories, with the answers to the same, as contained in the depositions of George F. Emory, taken between the same parties and agreed to be taken for the purposes of this trial as a deposition in this cause, subject to all legal objections on account of competency or relevancy. Said interrogatories and cross-interrogatories and the answers thereto are as follows:

1st interrogatory. Were you in the year 1853 one of the United States appraisers at large under the revenue laws of the United States?

2d. Did that board, consisting of yourself and other members, appraise in the city of New York in 1853, October, on samples received from New Orleans, sundry cargoes of sugar, concentrated molasses, concentrated melado, imported into New Orleans by the plaintiffs?

3d. Does the tabular statement hereto annexed, marked Exhibit "A," show the result of the action of said board in making said appraisal? Is it a copy of the tabular statement signed by the members of said board and sent to the Secretary of the Treasury of the United States, as showing the result of the action of the board on such appraisal, and as being a report thereof?

4th. Did said board in appraising said goods make any alterations from the invoice price or value of any of the merchandise appraised? If so, what?

Said cross-interrogatories Nos. 8th, 9th, and 12th are as follows:

Eighth. Why is being invoiced per arroba indicative of sugar?

9th. What is meant by casks being "charged as sugar casks?" How are sugar casks charged? How are molasses casks charged?

Tenth. Why was the concentrated molasses mentioned in the report of the appraisers general "not susceptible of being gauged?" Was the "concentrated melado" susceptible of being gauged?

Twelfth. Please state the extent of your familiarity with the products of the sugar cane, the length of time for which, and the modes in which you have acquired a knowledge of them.

Answers to the interrogatories and cross-interrogatories above:

1st. I was one of the United States appraisers at large in the year 1853, but I did not act in the capacity of chairman of the board. Mr. Geo. W. Pomeroy did act in that capacity. Mr. Pomeroy died last spring.

2d. The board, consisting of three associates and myself, did appraise in the city of New York on the 19th of Oct., 1853, sundry cargoes of sugar per samples received from New Orleans, which cargoes of sugar were represented in the several invoices as "concentrated molasses," "concentrated melado," "wet tips," "dry tips," &c.; were imported by Messrs. Belchers, of St. Louis. The board consisted of Mr. Geo. W. Pomeroy, Henry C. Laughlin, Wm. P. Ponder, and myself.

3d. The tabular statement marked Exhibit "A," and Mr. Pomeroy's letter annexed, do in my opinion show the result of the action of said board in making the appraisement.

The original record of the appraisement being filed in the office of the board in New York, where the appraisement was made, I was unable for want of time to compare it with the annexed copy, but do not doubt its correctness, clerical errors excepted.

4th. The board did make alterations from the invoice price or value by adding eighty-seven and a half cents for each five hundred pounds invoice weight, and two reals, or twenty-five cents, to each barrel, as shown in a statement marked "Exhibit A," in order to raise the same to the actual market value or wholesale price, at the period of exportation to the United States in the principal markets of the country from which the same had been imported, viz., the island of Cuba.

Answers to the 8th, 9th, and 12th cross-interrogatories, as follows:

Eighth. Sugars are always invoiced per "arroba" when exported from the island of Cuba, while the article of molasses is never invoiced by weight, but is invoiced by the keg of five and a half gallons each at some ports, while at others it is invoiced by the hogshead of one hundred and ten gallons.

Ninth. Sugar casks are charged per *each cask*, while molasses casks are charged at a given sum per gallon of their contents. This is invariably the case with these articles when imported from Cuba.

Twelfth. I have been employed by the government, with the exception of a few months, since 1840, as inspector, examiner, and appraiser at the port of Boston—the importations of sugar and molasses at which port being greater than any port in the Union except New York. Sugar and molasses, with other merchandise, has had my special attention since April, 1853. I have been general appraiser, and in that capacity have frequently appraised sugar and molasses in the principal ports of the United States.

Tenth, (which should have been inserted above.) For the same

reasons that sugar cannot be gauged, on account of its density. The "concentrated melado" was not susceptible of being gauged for the same reason as above.

To the reading of the 4th direct, and 8th, 9th, and 12th cross-interrogatories, and each and every of them, the said plaintiffs objected as being irrelevant and incompetent, especially so far as introduced with a view to or professing to explain or qualify the report of Pomeroy before given in evidence by defendant.

But the court overruled said objection, and permitted the same to be read to the jury, to all which the plaintiffs then and there excepted.

Defendant then read in evidence Treasury circular of 27th March, 1851, as follows:

TREASURY DEPARTMENT, *March* 27, 1851.

The following instructions are issued for the strict observance and government of the respective officers of the customs in carrying into effect the provisions of the annexed act of Congress, approved 3d of March, 1851, entitled "An act to amend the act regarding the appraisement of imported merchandise, and for other purposes," which takes effect on and after the first day of April next.

It will be perceived on examination of this act that it fixes the period of exportation to the United States as the time when the actual market value or wholesale price of any goods, wares, or merchandise in the principal markets of the country from which the same shall have been imported into the United States is to be appraised, estimated and ascertained. This provision, consequently, supersedes and abrogates so much of the provisions of the sixteenth section of the tariff act of 30th Aug't, 1842, as requires the market value or wholesale price to be appraised, estimated and ascertained at the time when the goods were purchased.

The exportation contemplated by the act is not deemed to apply exclusively to goods laden on board a vessel at a shipping port of the country of which the goods may be the growth, production or manufacture; but likewise applies to any goods exported from an interior country remote from the seaboard, having no shipping port, being bona fide destined in the regular course of trade for shipment to some owner, consignee, or agent, residing in the United States, of which satisfactory proof must be produced at the time of the entry. For example, goods thus exported from Switzerland, being of the origin of that country, which can only be, or most usually are, exported through the seaports of France, or goods from Saxony, or other interior German possessions, which must be, or most usually are, conveyed to a seaport for exportation to the United States. In these and analogous cases the exportation to the United States may be deemed to commence at the period when the goods leave the country of origin or production, and the true

market value in the principal markets of said country is to be ascertained and appraised, to which is to be added, as dutiable charges, the cost of transportation to the port of shipment, with the expenses thereat, until the goods are actually laden on board the vessel in which they may be shipped to the United States.

Where goods are shipped directly from the country of origin, the bill of lading will ordinarily establish the period of exportation, and in the other cases referred to the date of the authentication of the invoice by consular certificate; but in the absence of such proof, other evidence satisfactory to the United States appraisers may be taken to fix said period.

Where goods have not been actually purchased, the invoice must exhibit the actual market value or wholesale price at the period of exportation, with all charges included, in lieu of such value at the time and place of procurement or manufacture, as required by the 8th section of the act of March 1st, 1823, and the oath required to be taken on entry may be so modified as to meet the case. When the goods have been actually purchased, the invoice must, as heretofore, exhibit the true cost of the goods, and the owner, consignee, or agent, will still retain the privilege allowed by the 8th section of the tariff act of the 30th July, 1846, of adding to the entry to raise the cost or value given in the invoice to the true market value or wholesale price of the goods at the period of exportation, and will, moveover, become subject to the other provisions of said section.

The actual market value or wholesale price at the period of exportation to the United States having been appraised, estimated and ascertained upon the principles before stated, it becomes requisite to determine and fix the true dutiable value at the port where the goods may be entered, and upon which the duties are to be assessed. The law enjoins that there shall be added to "all costs and charges, except insurance, and including, in every case, a charge for commissions at the usual rates." These charges are as follows, to wit:

First. They must include "purchasing, carriages, dyeing, bleaching, dressing, finishing, putting up and packing," together with the value of the sack, packages, boxes, crate, hogshead, barrel, bale, cask, can, and covering of all kinds, bottles, jars, vessels and demijohns.

Second. Commissions at the usual rate, but in no case less than $2\frac{1}{2}$ per cent., and where there is a distinct brokerage, or where brokerage is a usual charge at the place of shipment or purchase, that to be added likewise.

Third. Export duties, cost of placing cargoes on board ship, including drayage, labor, bill of lading, lighterage, town dues, and shipping charges, dock or wharf dues, and all charges to place the articles on shipboard, and fire insurance, if effected for a period prior to the shipment of the goods to the United States.

Discounts are never to be allowed in any case, except on articles where it has been the uniform and established usage heretofore, and never more than the actual discount positively known to the appraiser; but in no case to be allowed, unless it is exhibited on the face of the invoice. Special attention is called to this item of discounts, as, from information received by the department, it is believed that numerous frauds have been practised on the revenue by excessive and unusual discounts being deducted on the invoices produced at the time of entry; and in no case are they to be allowed, except such per centage as may be ascertained to be customary on the different articles respectively at the places of purchase or shipment.

Marine insurance is exempted by law.

Inquiry having been made whether freight from the country or place of exportation to the United States is to be embraced amongst the dutiable charges, it becomes proper to remark, that under no former revenue or tariff act has such freight ever been deemed a dutiable charge; but, on the contrary, it has been uniformly decided by the department to be exempt therefrom.

If the department were now called upon to give a construction to the phraseology of the present law as regards this point, without reference to the wording of the previous tariff acts, or to the uniform practice of the department on the subject, it might come to a different conclusion; but the language of the act of 30th Aug't, 1842, as regards the items of charges which are to form a portion of the dutiable value of the goods, is precisely similar to that of the present law, and the construction put upon the former having been that freight from the port of shipment to the port of importation does not form a charge subject to duty, the department, after very full and mature consideration, does not feel authorized now to change that construction, especially in the absence of any explicit legal designation of freight as a dutiable item; presuming, that as Congress was of course aware of the long practice of the department on the subject, its views would have been clearly expressed concerning it, had the legislature intended that the change should be introduced of including freight as one of the charges on which duty was to be levied.

In addition to the construction thus put upon the tariff act of 1842, and uniformly acted upon since that time, the records of the department show that the question has been frequently brought to its attention, as far back as 1799, under statutes of similar import to the present one, and extending through all the subsequent years down to the present time, and its invariable decision has been that freight to the port of importation was not an item subject to duty.

It will be seen that the second section of the act gives full force and validity to the certificates of any one of the United States ap-

praisers to establish the appraisement of any goods, wares, and merchandise required by existing laws at ports where there are United States appraisers; and at ports where no such appraisers exist similar validity is given to the certificate of appraisement issued by the revenue officer to whom is committed the estimating and collecting of duties as enjoined by the 22d section of the tariff act of 30th Aug't, 1842. The law is deemed to refer to the certificate of a principal appraiser, or of one of the appraisers at large appointed under the 3d section of the act heretofore annexed, and not of an assistant appraiser.

Although the certificate *to* is made conclusive evidence of any appraisement, yet it is to be distinctly understood that the law does not contemplate any relaxation or change in respect to the due inspection, examination, and other necessary acts required of the appraisers in making appraisements in pursuance of existing laws and regulations.

The regulations respecting the duties of the appraisers at large appointed under the 3d section of this act will form the subject of separate circular instructions.

WM. L. HODGE,
Acting Secretary of the Treasury.

Treasury Circular, Nov. 26th, 1846.

(Here insert Mayo, pp. 350 and 351, from "the principle" to "excluded by law," as follows:)

"The principle upon which the appraisement is based is this: That the actual value of articles on shipboard at the last place of shipment to the United States, including all preceding expenses, duties, costs, charges, and transportation, is the foreign value upon which the duty is to be assessed. The costs and charges that are to be embraced in fixing the valuation over and above the value of the article at the place of growth, production, or manufacture, are—

"1st. The transportation, shipment, and transhipment, with all the expenses included, from the place of growth, production, or manufacture, whether by land or water carriage, to the vessel in which shipment is made to the United States. Included in these estimates is the value of the sack, package, box, crate, hogshead, barrel, bale, cask, can, and covering of all kinds, bottles, jars, vessels, and demijohns.

"2d. Commissions at the usual rate, but in no case less than 2½ per cent., and where there is a distinct brokerage, that to be added.

"3d. Export duties, including such duties at all places from the place of growth, production, or manufacture, to the last place of shipment to the United States.

"4th. Cost of placing cargoes on board ship, including drayage, labor, bill of lading, lighterage, town dues, and shipping charges, dock and wharf dues, and all charges to place the article on shipboard.

"Discounts are never to be allowed in any place except on articles where it has been the uniform and established usage heretofore, and never more than the actual discount positively known to the appraiser.

"The freight from the last place of shipment to the United States is not to be included in the valuation, and insurance is also excluded by law."

Also Mayo, at page 405:

"American produce or manufacture, exported to a foreign country, and brought back to the United States, entitled to exemption from duty under Schedule 1, tariff of 1846, only when the identification is made in compliance with the terms of 47th and 48th sections of the general collection *of* law of 2d March, 1799, and the article is brought back in the same condition as when exported."

Also Treasury circular No. 67, at pages 85 and 86, sect. 17 and 18.

XVII. Previous to the operation of the act of the 14th of August, 1846, duties were levied on the ascertained quantities of certain articles imported; hence the principle laid down in the act of 1820 for ascertaining the value of goods free of duty, and of articles paying duty on their quantity, to be that which governed in the case of goods paying duties ad valorem.

The act of August, 1846, changes in some respects mode of levying duties on certain imports, and directs that from and after the first day of December, 1846, all goods, wares, and merchandise imported (not free of duty) shall be subject to duty on their value.

The mode of ascertaining this value is clearly pointed out in the first section of the act of the 3d March, 1851, which enacts that the actual market value or wholesale price, at the period of exportation to the United States, in the principal markets of the country from which the same shall have been imported into the United States, shall be appraised, and to such value shall be added all costs and charges, except insurance, and including in every case a charge for commissions, at the usual rates, as the true value at the port where the same may be entered, upon which duties shall be assessed.

XVIII. The costs and charges that are to be added to said value in making said appraisement or assessment, are as follows:

First. They must include "putting up and packing," together with the value of the sack, package, box, crate, hogshead, barrel, bale, cask, can, bottles, jars, vessels, and demijohns, and coverings of all kinds.

Second. Commissions must in every case be made a dutiable charge, at the usual rates, but never less than 2½ per cent., nor less than is stated in the invoice.

If it appear on the face of the invoice or entry at less than the usual rate, it must be advanced by the appraisers. Where there is a distinct brokerage, or where brokerage is a usual charge at the place of shipment or purchase, that to be added likewise. Commissions on the amount of shipping charges at the foreign port of exportation, constitute one of the charges liable to duty under existing laws and instructions.

Third. Export duty, as on silks from China, storage at the foreign shipping port, cost of putting cargoes on board ship, including drayage, labor, bill of lading, lighterage, town dues, and shipping charges, dock or wharf dues, and all charges to place the article on shipboard, and fire insurance, if effected for a period prior to the shipment of goods to the United States.

Defendant then gave evidence, proving that at the times of the several exportations and importations, and at the dates of the several papers in evidence, there were in office at New Orleans a collector of customs and a naval officer of the United States, and duly appointed deputies of said officers.

On the trial it was admitted that the duties upon the importations mentioned in the several entries and invoices given in evidence by plaintiffs, as exacted by the defendant and paid by the plaintiffs, were those that had been assessed upon these importations by the collector and naval officer of the U. S. customs at New Orleans, the said officers (in the case of those cargoes which had formed the subject of the action of the board of general appraisers at New York) taking the action of that board as the basis upon which they estimated the duties to be paid thereon, and adopting the same in substance and detail, and said officers (in the case of the Alnah, entered 9th May, 1853, and Rainbow, entered May 2d, 1853) taking the action of the U. S. appraisers at New Orleans, approving the dutiable value given in the entries made under protest, as the basis upon which they estimated the duties to be paid thereon; and in the case of the Rainbow, entered 29th June, 1853, taking the action of the *action of* U. S. appraisers at New Orleans, raising the invoiced value of the said barrels fifty cents each on every barrel therein mentioned, and which assessments of duties upon each of said importations had been duly transmitted from said collector to said defendant, as shown in the entries at St. Louis, given in evidence by plaintiffs.

In's Ref'd.

The plaintiffs then asked the following instructions:

The plaintiffs are entitled to recover in this action the amount exacted by the defendant, as duties chargeable by the laws of the

United States, and paid by plaintiffs to him, on all barrels that the jury may be satisfied, from the evidence, were of the product and manufacture of the United States, and were exported from the port of New Orleans by plaintiffs, and afterwards imported into said port by said plaintiffs in the same condition as when exported, and in relation to which the affidavits and protests given in evidence by plaintiffs were made. If the plaintiffs have satisfied the jury that the identity of the barrels so imported with those so exported was established to the satisfaction of the collector and naval officer of the said port, that no drawback, bounty, or allowance had been paid thereupon, and in the absence of any proof to the contrary, or that any objection was, at the time of making the said affidavit, made by either the said collector or naval officer, the affidavits made before said collector, and given in evidence by plaintiffs, are evidence upon which the jury are authorized to find that the identity was established to the satisfaction of said collector and naval officer.

If the jury believe from the evidence that the barrels, to recover the duties on which the plaintiffs now sue, were of the produce or manufacture of the United States; that about the year 1853 they were by the plaintiffs exported from New Orleans to Matanzas, in Cuba, and were in said year imported by the plaintiffs from Matanzas into the United States, at New Orleans, and were, when imported, in the same condition in which they were when exported; that they are the same barrels specified in the invoices, entries, and protests in evidence; that the plaintiffs paid to the defendants, as an impost duty to the United States on said barrels, 30 per centum on the value thereof stated on the said entries, and at or before the time of said payment the plaintiffs made the protests in writing, given in evidence by the plaintiffs against such payment, and that, at the time of their application for the entry of said barrels at the custom-house at New Orleans, the plaintiffs claimed before the collector at said custom-house that said barrels were of the produce or manufacture of the United States, and as such had been by them exported from and imported into the United States in the same condition as when exported, upon which no drawback or bounty had been allowed, and that upon said grounds the plaintiffs were entitled to import the same, under the laws of the United States, exempt from duty, and as proof in support of such claim the collector took and received from the plaintiffs, or their agents, the affidavits made before said collector, annexed to said entries, and no objection was made to the plaintiffs, that such proof did not satisfy the collector and naval officer of New Orleans, of the truth of the statements contained in such affidavits; and the jury believe from the evidence that the collector at New Orleans refused to permit said barrels to be entered exempt from duty, but assessed thereon said duty of 30 per centum upon their value, as

estimated in said entries, not upon the grounds of the insufficiency of proof, to the satisfaction of the collector and naval officer, of the facts stated in said affidavits,—then the jury are instructed that said duties were illegally required of the plaintiffs, and they are entitled to recover the same, with interest from the time of payment.

The plaintiffs are entitled to recover in this action the amount exacted by defendant as duties chargeable by the laws of the United States, and paid by defendant, over and above the amount of thirty per cent. upon the actual value of said barrels in Cuba, with the addition of the cost, charges, and commissions thereon, as stated in the invoices, and against which exaction said plaintiffs at the time protested in the manner given in evidence in this case.

The jury are instructed that the plaintiffs are entitled to recover for all sums paid by them under protests made in St. Louis, given in evidence by them above, before such payment, as duty upon the value of the barrels assessed upon the increased value thereof, over and above the estimate of their value stated in the invoices of the plaintiffs given in evidence.

The jury are instructed that the plaintiffs were not legally liable to pay duties to the defendant, assessed on the barrels, in the evidence mentioned, to an amount above the actual cost of the same, with charges thereon, and for all amounts paid by the as duty assessed on the estimated value of the barrels above their actual cost, with charges thereon, under protest at the time of payment, the plaintiffs are entitled to recover with interest.

All of which the court refused to give to the jury, and to which refusal so to give the said plaintiffs then and there excepted.

Def'ts' Ins.

The defendant asked the court to give to the jury the following instruction:

"On the whole evidence in this case the plaintiffs cannot recover against defendant."

Which the court gave, and to the giving of which plaintiffs then and there excepted.

The jury found a verdict for defendant. The plaintiffs now here file this as their bill of exceptions, and pray that the same may be allowed and sealed, which is accordingly done.

R. W. WELLS. [SEAL.]

UNITED STATES OF AMERICA,
Districts of Missouri, sct.

I, Benjamin F. Hickman, clerk of the circuit court of the United States for the districts of Missouri, do certify the foregoing one

hundred and seventeen pages, to be a correct and complete transcript of the record, pleadings, and proceedings, in a case in said court decided, wherein William H. Belcher and Charles Belcher were plaintiffs, and William A. Linn was defendant, as fully as the same remain on file and of record in my office.

In testimony whereof, I hereto subscribe my name and affix the seal of said court at office in St. Louis, this first day of April, A. D. 1857.

[L. S.]

BEN. F. HICKMAN,
Clerk.

The following is a copy of the agreement of counsel, omitted in the foregoing transcript, because it was not on file when the transcript was made out, and was not produced until this 8th July, A. D. 1857.

In the Circuit Court of the United States for Missouri district.

WILLIAM H. BELCHER and CHARLES BELCHER agst. WILLIAM A. LINN. } No.

It is admitted by the parties hereto that on the trial the plaintiffs proved that the amount of duties paid by plaintiffs, and received by defendant, as such surveyor and acting collector, as appeared in evidence on the trial, were duly paid at the time of the receipt thereof into the Treasury of the United States.

THOS. C. REYNOLDS,
Attorney for Defendant.
J. R. SHEPLEY AND F. A. DICK,
Att'ys for Pl'ff.

[L. S.] UNITED STATES OF AMERICA, *ss.*

The President of the United States to the honorable the Judge of the Circuit Court of the United States for Missouri district, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, heard and decided between William H. Belcher and Charles Belcher, plaintiffs, and William A. Linn, defendant, a manifest error hath happened, to the great damage of the said William H. and Charles Belcher, plaintiffs, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of

December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, this second of March, in the year of our Lord one thousand eight hundred and fifty-seven.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the district of Missouri, dated as aforesaid.

BEN F. HICKMAN,
Clerk C. C. U. S., Missouri district.

Allowed by R. W. WELLS,
Dist. Judge U. S. for western dist. Mo.

In obedience to the within writ of error, I herewith send annexed a copy of the record and proceedings in the case of William H. and Charles Belcher, against William A. Linn, in United States circuit court for Missouri districts, duly certified as commanded by said writ.

Given under my hand at St. Louis, this 1st day of April, 1857.

BEN. F. HICKMAN,
Clerk C. C. U. S., Mo. dis.

The United States of America to William A. Linn, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for Missouri district, wherein William H. Belcher and Charles Belcher are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Robert W. Wells, district judge of the United States for the western district of Missouri, this 29th day of April, in the year of our Lord one thousand eight hundred and fifty-seven.

R. W. WELLS.

I acknowledge service of the above citation.

W. A. LINN.

St. Louis, Nov. 12th, '57.

Filed 26th November, 1858.

570.

SUPREME COURT OF THE UNITED STATES.

No. 144.

MIGUEL DAVILA, PLAINTIFF IN ERROR,

vs.

DAVID AND JESSE MUMFORD.

WRIT OF ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

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GIDEON, Print.

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THE UNITED STATES OF AMERICA,
District Court of the United States,
Western District of Texas, at Austin sitting.

At a term of the district court of the United States for the western district of Texas, begun and held at the city of Austin, on the first Monday of June, in the year of our Lord one thousand eight hundred and fifty-seven:

Present, the Honorable Thomas H. Duval, judge of said court, Wm. C. Young, United States marshal, and Matthew Hopkins, clerk:

Among other were the following proceedings, to wit:

Title of Cause.

MIGUEL DAVILA, Plaintiff,
versus
DAVID MUMFORD, G. J. GRAHAM, Peter Server, John Deleshamet, A. W. Sillivan, Peter Lower, Lewis Taylor, Beverly Pool, Hugh McKean, Pierson Carlile, J. J. Bangs and Jesse Mumford, Defendants.

Be it remembered, that heretofore, to wit, on the twelfth day of February, in the year of our Lord one thousand eight hundred and fifty-five, came the plaintiff, by his attorneys, Allen and Hale, and filed his petition herein, which is in words and terms following, and endorsed, to wit:

Petition.

MIGUEL DAVILA
vs.
DAVID MUMFORD et al. } L. 104.

This action is brought as well to try title as for damages.

ALLEN & HALE,
Atty's for Plff's.

Filed February 12th, 1855.

W. P. DE NORMANDIE,
Clerk.

And is in words, to wit:

District Court of the United States, district of Texas, at Austin.
[REC. CXLIV, D. T. 1859.]—1

To the Honorable John C. Watrous, judge of the district court of the United States, having and exercising the powers and jurisdiction of a circuit court of the same, for the district of Texas, sitting at Austin.

The petition of Miguel Davila, who is a citizen of the State of Coahuila, one of the United Mexican States, and an alien to the United States of America, complaining against David Mumford, G. J. Graham, Peter Server, John Deleshamet, A. W. Sillivan, Peter Lower, Lewis Taylor, Beverly Pool, who reside in the county of Bell and State of Texas, and who are citizens of the said State, and Hugh McKean, Pierson Carlile and J. J. Bangs, who reside in the county of Milam and the State aforesaid, and who are also citizens of the said State of Texas, respectfully represent to your honor, that heretofore, to wit, on the first day of May, A. D. 1851, your petitioner was seized and possessed in his own right as owner in fee of a certain tract of land, situated in what was formerly the county of Milam, in the said State of Texas, on the right bank of the river San Andres, otherwise called Little river, where Buffalo creek and Donaho's creek enter said river, and bounded and described as follows—that is to say, beginning at a stake in the margin of a bluff or ravine, from which, 4 varas distant, a white-oak, 8 inches in diameter, bears north 59° west; thence south 20° west 19,600 varas, crossing Clay's creek and Alligator creek to the northeast corner of a tract of six sitios, surveyed for Pedro Zarsa, at a stake, from which, at 382 varas distant, south 20° west, is a musquite tree 8 inches in diameter; thence north 70° west 13,750 varas, along the northern line of the tract surveyed for said Zarsa to the northwest corner of the said tract, at a stake and mound in the prairie; thence north 20° east 20,350 varas to the said river, at a stake, from which, 5 varas, south 53° east, is a hackberry, and 11 varas north is a pecan tree; thence following the said river by its menanders down to the point of beginning, including within said boundaries eleven square leagues, or sitios of land, more or less. And while your petitioner was thus seized and possessed of the said land, by virtue of and under a title from the proper officers of the former State of Coahuila and Texas, to wit, on the day and year aforesaid, the said defendants, combining and confederating together, with force and arms, broke and entered the close of your petitioner, to wit, the said tract of land, and then and there, with force and arms, ousted and evicted your petitioner, and have since so remained in forcible possession of the said land, taking the fruits and profits of the same, to the value of one thousand dollars per annum for each of them, and converting the same to their own use, against the peace of the said State of Texas, and to the damage of your petitioner thirty thousand dollars.

Wherefore your petitioner prays your honor to cause the said defendants to be cited to appear at the next term of this court, to

be held at Austin, to answer to the premises, and that your petitioner may then have judgment for his land aforesaid, and also for his damages and costs of suit, and also such other and further relief as your honor may deem meet.

ALLEN & HALE,
Att'ys for Pl'ff.

Citation to David Mumford.

And afterwards, to wit, on the 27th day of February, A. D. 1855, citations issued to the defendants, as appears by the certificates of the clerk endorsed thereon, which citations and endorsements are in words, terms, and figures, to wit:

The citation to David Mumford is endorsed, to wit:

L. 104. United States District Court. Miguel Davila vs. David Mumford et als.

Citation for David Mumford.
Issued Feb. 27th, 1855.

W. P. DE NORMANDIE,
Clerk.

And said citation is in words, to wit:

United States District Court, district of Texas.

The President of the United States to the Marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon David Mumford, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Austin, on the third Monday of November next, to answer to the petition and complaint of Miguel Davila against David Mumford, G. J. Graham, Peter Server, John Deleshamet, A. W. Sillavin, Peter Lower, Lewis Taylor, Beverly Pool, Hughe McKean, Pierson Carlile, and J. J. Bangs, in an action of trespass to try title to land, to plaintiffs' damage thirty thousand dallars, of which you will serve the said defendant, David Mumford, with the accompanying copy of said petition.

Witness the Hon. John C. Watrous, judge of said court, and seal of court, at the city of Austin, this 27th day of February, A. D. eighteen hundred and fifty-five, and 79th year of the independence of the United States of America.

[SEAL.]

W. P. DE NORMANDIE,
Clerk.

Return.

The return upon which citation is endorsed thereon, to wit:
Received on the 15th day of March, 1855, and executed on the

To the Honorable John C. Watrous, judge of the district court of the United States, having and exercising the powers and jurisdiction of a circuit court of the same, for the district of Texas, sitting at Austin.

The petition of Miguel Davila, who is a citizen of the State of Coahuila, one of the United Mexican States, and an alien to the United States of America, complaining against David Mumford, G. J. Graham, Peter Server, John Deleshamet, A. W. Sillivan, Peter Lower, Lewis Taylor, Beverly Pool, who reside in the county of Bell and State of Texas, and who are citizens of the said State, and Hugh McKean, Pierson Carlile and J. J. Bangs, who reside in the county of Milam and the State aforesaid, and who are also citizens of the said State of Texas, respectfully represent to your honor, that heretofore, to wit, on the first day of May, A. D. 1851, your petitioner was seized and possessed in his own right as owner in fee of a certain tract of land, situated in what was formerly the county of Milam, in the said State of Texas, on the right bank of the river San Andres, otherwise called Little river, where Buffalo creek and Donaho's creek enter said river, and bounded and described as follows—that is to say, beginning at a stake in the margin of a bluff or ravine, from which, 4 varas distant, a white-oak, 8 inches in diameter, bears north 59° west; thence south 20° west 19,600 varas, crossing Clay's creek and Alligator creek to the northeast corner of a tract of six sitios, surveyed for Pedro Zarsa, at a stake, from which, at 382 varas distant, south 20° west, is a musquite tree 8 inches in diameter; thence north 70° west 13,750 varas, along the northern line of the tract surveyed for said Zarsa to the northwest corner of the said tract, at a stake and mound in the prairie; thence north 20° east 20,350 varas to the said river, at a stake, from which, 5 varas, south 53° east, is a hackberry, and 11 varas north is a pecan tree; thence following the said river by its menanders down to the point of beginning, including within said boundaries eleven square leagues, or sitios of land, more or less. And while your petitioner was thus seized and possessed of the said land, by virtue of and under a title from the proper officers of the former State of Coahuila and Texas, to wit, on the day and year aforesaid, the said defendants, combining and confederating together, with force and arms, broke and entered the close of your petitioner, to wit, the said tract of land, and then and there, with force and arms, ousted and evicted your petitioner, and have since so remained in forcible possession of the said land, taking the fruits and profits of the same, to the value of one thousand dollars per annum for each of them, and converting the same to their own use, against the peace of the said State of Texas, and to the damage of your petitioner thirty thousand dollars.

Wherefore your petitioner prays your honor to cause the said defendants to be cited to appear at the next term of this court, to

be held at Austin, to answer to the premises, and that your petitioner may then have judgment for his land aforesaid, and also for his damages and costs of suit, and also such other and further relief as your honor may deem meet.

ALLEN & HALE,
Att'ys for Pl'ff.

Citation to David Mumford.

And afterwards, to wit, on the 27th day of February, A. D. 1855, citations issued to the defendants, as appears by the certificates of the clerk endorsed thereon, which citations and endorsements are in words, terms, and figures, to wit:

The citation to David Mumford is endorsed, to wit:

L. 104. United States District Court. Miguel Davila vs. David Mumford et als.

Citation for David Mumford.
Issued Feb. 27th, 1855.

W. P. DE NORMANDIE,
Clerk.

And said citation is in words, to wit:

United States District Court, district of Texas.

The President of the United States to the Marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon David Mumford, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Austin, on the third Monday of November next, to answer to the petition and complaint of Miguel Davila against David Mumford, G. J. Graham, Peter Server, John Deleshamet, A. W. Sillavin, Peter Lower, Lewis Taylor, Beverly Pool, Hughe McKean, Pierson Carlile, and J. J. Bangs, in an action of trespass to try title to land, to plaintiffs' damage thirty thousand dallars, of which you will serve the said defendant, David Mumford, with the accompanying copy of said petition.

Witness the Hon. John C. Watrous, judge of said court, and seal of court, at the city of Austin, this 27th day of February, A. D. eighteen hundred and fifty-five, and 79th year of the independence of the United States of America.

[SEAL.]

W. P. DE NORMANDIE,
Clerk.

Return.

The return upon which citation is endorsed thereon, to wit:
Received on the 15th day of March, 1855, and executed on the

20th day of March, 1855, by handing the defendant, David Mumford, a true copy of this writ, and a certified copy of the petition in this cause, 54 miles from Austin city, in Milam county.

BEN. McCULLOCH, *U. S. M.*
By J. A. HARRELL, *Deputy.*

Serving writ.....	$2 00
Travelled 54 m., 6 cts...	3 24
	$5 24

Filed July 30, 1855.

W. P. DE NORMANDIE,
Clerk.

Citation to G. J. Graham.

Citation to G. J. Graham is endorsed, to wit:

L. 104. United States District Court. Miguel Davila vs. David Mumford et als.

Citation to G. J. Graham.
Issued February 27th, 1855.

W. P. DE NORMANDIE,
Clerk.

And is in words, to wit:

United States District Court, district of Texas.

The President of the United States to the Marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon G. J. Graham, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Austin, on the third Monday of November next, to answer to the petition and complaint of Miguel Davila against David Mumford, G. J. Graham, Peter Server, John Deleshamet, A. W. Sillavin, Peter Lower, Lewis Taylor, Beverly Pool, Hugh McKean, Pierson Carlile, and J. J. Bangs, in an action of trespass to try title to land, to plaintiff's damage thirty thousand dollars, of which you will serve the said defendant, G. J. Graham, with the accompanying copy of said petition.

Witness the Hon. John C. Watrous, judge of said court, and seal of court, at the city of Austin, this 27th day of February, A. D. eighteen hundred and fifty-five, and 79th year of the independence of the United States of America.

[SEAL.]

W. P. DE NORMANDIE,
Clerk.

Return.

The return upon which is endorsed, to wit:

Received on the 15th day of March, 1855, and executed on the 19th day of March, 1855, by handing the defendant, J. G. Graham, a true copy of this writ, and certified copy of the petition in this cause, in Bell county, 58 miles from Austin city.

BEN. McCULLOCH, *U. S. M.*
By. J. HARRELL, *Deputy.*

Serving writ.....	$2 00
Travelled 58 miles, 6 cts..	3 48
	$5 48

Return filing endorsed:
Filed July 30th, 1855.

W. P. DE NORMANDIE,
Clerk.

Citation to Peter Server.

Citation to Peter Server is endorsed, to wit:

United States District Court.

MIGUEL DAVILA
vs. } L. 104.
DAVID MUMFORD et al.

Citation for Peter Server. Issued February 27th, 1855.
W. P. DE NORMANDIE, *Clerk.*

And is in words, to wit:

United States District Court, district of Texas.

The President of the United States to the Marshal or any of his lawful deputies of the district of Texas, greeting:

You are hereby commanded to summon Peter Server, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Austin, on the third Monday of November next, to answer to the petition and complaint of Miguel Davila against David Mumford, G. J. Graham, Peter Server, John Deleshamet, A. W. Sillavin, Peter Lower, Lewis Taylor, Beverly Pool, Hugh McKean, Pierson Carlile, and J. J. Bangs, in an action of trespass to try title to land, to plaintiff's damage thirty thousand dollars, of which you will serve the said defendant, Peter Server, with the accompanying copy of said petition.

Witness the Hon. John C. Watrous, judge of said court, and seal of court, at the city of Austin, this 27th day of Feb-
[SEAL.] ruary, A. D. eighteen hundred and fifty-five, and 79th year of the independence of the United States of America.

W. P. DE NORMANDIE, *Clerk.*

Return.

The marshal's return upon which is endorsed, to wit:

Received on the 15th day of March, 1855, and executed on the 19th day of March, 1855, by handing the defendant, Peter Server, a true copy of this writ, and a certified copy of the petition in this cause, in Milam county, 50 miles from Austin city.

BEN. McCULLOCH, *U. S. M.*
By J. HARRELL, *Deputy.*

Serving writ.....	$2 00
Travelled 50 miles, 6 c..	3 00
	$5 00

Return filing endorsed, to wit:
Filed July 30th, 1855.

W. P. DE NORMANDIE, *Clerk.*

Citation to John Deleshamet.

Citation to John Deleshamet is endorsed, to wit:

United States District Court.

MIGUEL DAVILA
vs.
DAVID MUMFORD et als. } L. 104.

Citation for John Deleshamet. Issued Feb. 27th, 1855.

W. P. DE NORMANDIE, *Clerk.*

And is in words, to wit:

United States District Court, district of Texas.

The President of the United States to the Marshal or any of his lawful deputies, greeting:

You are hereby commanded to summon John Deleshamet, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Austin, on the third Monday of November next, to answer to the petition and complaint, of Miguel Davila against David Mumford, G. J. Graham, Peter Server, John Deleshamet, A. W. Sillavin, Peter Lower, Lewis Taylor, Beverly Pool, Hugh McKean, Pierson Carlisle, and J. J. Bangs, in an action of trespass to try title of land, to plaintiff's damage thirty thousand dollars, of which you will serve the said defendant, John Deleshamet, with the accompanying copy of said petition.

Witness the Hon. John C. Watrous, judge of said court, and seal of court, at the city of Austin, this 27th day of Feb-
[SEAL.] ruary, A. D. eighteen hundred and fifty-five, and 79th year of the independence of the United States of America.

W. P. DE NORMANDIE, *Clerk.*

Return.

The marshal's return endorsed thereon is in words, to wit:

Received on the 15th day of March, 1855, and executed on the 19th day of March, 1855, by handing the defendant, John Deleshamet, a true copy of this writ, and a certified copy of the petition in this cause, in Milam county, 50 miles from Austin city.

BEN. McCULLOCH, *U. S. M.*
By J. HARRELL, *Deputy.*

Serving writ.....	$2 00
Travelled 50 miles, 6 c..	3 00
	$5 00

Citation to A. W. Sillavin.

The return filing is endorsed, to wit:

Filed July 30th, 1855.

W. P. DE NORMANDIE, *Clerk.*

Citation for A. W. Sillavin is endorsed:

United States District Court.

MIGUEL DAVILA
vs.
DAVID MUMFORD et als. } L. 104.

Citation for A. W. Sillavin. Issued February 27, 1855.

W. P. DE NORMANDIE, *Clerk.*

And is in words, to wit:

United States District Court, district of Texas.

The President of the United States to the Marshal or any of his lawful deputies, greeting:

You are hereby commanded to summon A. W. Sillavin, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Austin, on the third Monday of November next, to answer to the petition and complaint of Miguel Davila against David Mumford, G. J. Graham, Peter Server, John Deleshamet, A. W. Sillavin, Peter Lower, Lewis Taylor, Beverly Pool, Hugh McKean, Pierson Carlile, and J. J. Bangs, in an action of trespass to try title for land, to plaintiff's damage thirty thousand dollars, of which you will serve the said defendant, A. W. Sillavin, with the accompanying copy of said petition.

Witness the Hon. John C. Watrous, judge of said court, and seal of court, at the city of Austin, this 27th day of February, A. D. eighteen hundred and fifty-five, and 79th year of the independence of the United States of America.

W. P. DE NORMANDIE, *Clerk.*

Return.

The marshal's return upon which is endorsed in words, to wit:

Received on the 15th day of March, 1855, and executed on the 21st day of March, 1855, by handing the defendant, A. W. Sillavin, a true copy of this writ, and a certified copy of the petition in this cause in Milam county, 85 miles from Austin city.

BEN. McCULLOCH, *U. S. M.*
By J. HARRELL, *Deputy.*

Serving writ.....	$2 00
Travelled 85 miles, 6 c..	5 10
	$7 10

Return filing is endorsed, to wit:
Filed July 30th, 1855.

W. P. DE NORMANDIE, *Clerk.*

Citation to Peter Lower.

The citation to Peter Lower is endorsed, to wit:

MIGUEL DAVILA
vs.
DAVID MUMFORD et al. } L. 104.

Citation for Peter Lower. Issued February 27th, 1855.
W. P. DE NORMANDIE, *Clerk.*

And is in words, to wit:

United States District Court, district of Texas.

The President of the United States to the Marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon Peter Lower, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Austin, on the third Monday of November next, to answer to the petition and complaint of Miguel Davila against David Mumford, G. J. Graham, Peter Server, John Deleshamet, A. W. Sillavin, Peter Lower, Lewis Taylor, Beverly Pool, Hugh McKean, Pierson Carlile, and J. J. Bangs, in an action of trespass to try title to land, to plaintiff's damage thirty thousand dollars, of which you will serve the said defendant, Peter Lower, with the accompanying copy of said petition.

Witness the Hon. John C. Watrous, judge of said court, and seal of court, at the city of Austin, this 27th day of February, A. D. eighteen hundred and fifty-five, and 79th year of the independence of the United States of America.

W. P. DE NORMANDIE,
Clerk.

The return filing is endorsed, to wit:
Filed July 30th, 1855.

W. P. DE NORMANDIE, *Clerk*.

Return.

The return of the marshal on citation to Peter Lower is endorsed also, to wit:

Received on the 15th day of March, 1855, and not executed, because the defendant, Peter Lower, could not be found in this district.

BEN. McCULLOCH, *U. S. M.*
By J. HARRELL, *Deputy*.

Citation to Lewis Taylor.

Citation to Lewis Taylor is endorsed, to wit:

United States District Court.

MIGUEL DAVILA
vs.
DAVID MUMFORD et als. } L. 104.

Citation for Lewis Taylor. Issued Feb. 27th, 1855.

W. P. DE NORMANDIE, *Clerk*.

And is in words, to wit:

United States District Court, district of Texas.

The President of the United States to the Marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon Lewis Taylor, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Austin, on the third Monday of November next, to answer to the petition and complaint of Miguel Davila against David Mumford, G. J. Graham, Peter Server, John Deleshamet, A. W. Sillavin, Peter Lower, Lewis Taylor, Beverly Pool, Hugh McKean, Pierson Carlile, and J. J. Bangs, in an action of trespass to try title for land, to plaintiff's damage thirty thousand dollars, of which you will serve the said defendant, Lewis Taylor, with the accompanying copy of said petition.

Witness the Hon. John C. Watrous, judge of said court, and seal of court, at the city of Austin, this 27th day of February, A. D. eighteen hundred and fifty-five, and 79th year of the independence of the United States of America.

W. P. DE NORMANDIE, *Clerk*.

Return.

The marshal's return is endorsed in words, to wit:

Received on the 15th day of March, 1855, and executed on the

19th day of March, 1855, by handing the defendant, Lewis Taylor, a true copy of this writ and certified copy of the petition in this cause, in Milam county, 53 miles from Austin city.

BEN. McCULLOCH, *U. S. M.*
By J. HARRELL, *Deputy*.

Serving writ.....	$2 00
Travelled 53 miles, 6.....	3 18
	$5 18

Return filing is endorsed, to wit:
Filed July 30th, 1855.

W. P. DE NORMANDIE,
Clerk.

Citation to Beverly Pool.

Citation to Beverly Pool is endorsed in words, to wit:

United States District Court.

MIGUEL DAVILA
vs. } L. 104.
DAVID MUMFORD et al.

Citation for Beverly Pool. Issued February 27th, 1855.

W. P. DE NORMANDIE,
Clerk.

United States District Court, district of Texas.

The President of the United States to the Marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon Beverly Pool, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Austin, on the third Monday of November next, to answer to the petition and complaint of Miguel Davila against David Mumford, G. J. Graham, Peter Server, John Deleshamet, A. W. Sillavin, Peter Lower, Lewis Taylor, Beverly Pool, Hugh McKean, Pierson Carlile, and J. J. Bangs, in an action of trespass to try title to land, to plaintiff's damage of thirty thousand dollars, of which you will serve the said defendant, Beverly Pool, with the accompanying copy of said petition.

Witness the Hon. John C. Watrous, judge of said court, and seal of court, at the city of Austin, this 27th day of Febru-
[SEAL.] ary, A. D. eighteen hundred and fifty-five, and 79th year of the independence of the United States of America.

W. P. DE NORMANDIE,
Clerk.

Return.

Return of the marshal is endorsed in words, to wit:

Received on the 15th day of March, 1855, and executed on the 20th day of March, 1855, by handing the defendant, Beverly Pool, a true copy of this writ, and a certified copy of the petition in this cause, in Milam county, 50 miles from Austin city.

BEN. McCULLOCH, *U. S. M.*
By J. HARRELL, *Deputy.*

Serving writ.....	$2 00
Travelled 50 miles, 6	3 00
	$5 00

The return filing is endorsed in words, to wit:

Filed July 30th, 1855.

M. P. DE NORMANDIE,
Clerk.

Citation to Hugh McKean.

Citation to Hugh McKean is endorsed in words to wit:

United States District Court.

MIGUEL DAVILA
vs.
DAVID MUMFORD et al. } L. 104.

Citation for Hugh McKean. Issued February 27th, 1855.

W. P. DE NORMANDIE,
Clerk.

And is in words, to wit:

United States District Court, district of Texas.

The President of the United States to the Marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon Hugh McKean, if he be found in your district, to be and appear before the honorable the district court of the United States at a court to be holden in and for the district of Texas, at the city of Austin, on the third Monday of November next, to answer to the petition and complaint of Miguel Davila against David Mumford, G. J. Graham, Peter Server, John Deleshamet, A. W. Sillavin, Peter Lower, Lewis Taylor, Beverly Pool, Hugh McKean, Pierson Carlile, and J. J. Bangs, in an action of trespass to try title to land, to plaintiff's damage thirty thousand dollars, of which you will serve the said defendant, Hugh McKean, with the accompanying copy of said petition.

Witness the Hon. John C. Watrous, judge of said court, and seal of court, at the city of Austin, this 27th day of February, A. D. eighteen hundred and fifty-five, and 79th year of the independence of the United States of America.

[SEAL.]

W. P. DE NORMANDIE,
Clerk.

Return.

The return of the marshal is endorsed in words, to wit:

Received on the 15th day of March, 1855, and executed on the 20th day of March, 1855, by handing the defendant, Hugh McKean, a true copy of this writ, and a certified copy of the petition in this cause, in Milam county, 50 miles from Austin city.

BEN. McCULLOCH, *U. S. M.*
By J. HARRELL, *Deputy.*

Serving writ.....	$2 00
Travelled 50 miles, 6 cts.....	3 00
	$5 00

Return filing is endorsed, to wit:

Filed July 30th, 1855.

W. P. DE NORMANDIE, *Cl'k.*

Citation to Pierson Carlile.

Citation to Pierson Carlile is endorsed in words, to wit:

United States District Court.

MIGUEL DAVILA
vs. } L. 104.
DAVID MUMFORD et al.

Citation for Pierson Carlile. Issued July 30th, 1855.

W. P. DE NORMANDIE, *Cl'k.*

And is in words, to wit:

United States District Court, district of Texas.

The President of the United States to the Marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon Pierson Carlile, if he be found in your district, to be and appear before the honorable the district court of the United States at a court to be holden in and for the district of Texas, at the city of Austin, on the third Monday of November next, to answer to the petition and complaint of Miguel Davila against David Mumford, G. J. Graham, Peter Server, John Deleshamet, A. W. Sillavin, Peter Lower, Lewis Taylor, Beverly Pool, Hugh McKean, Pierson Carlile, and J. J. Bangs, in an action of trespass to try title to land, to plaintiff's

damage thirty thousand dollars, of which you will serve the said defendant, Pierson Carlile, with the accompanying copy of said petition.

Witness the Hon. John C. Watrous, judge of said court, and seal of court, at the city of Austin, this 27th day of Feb-
[SEAL.] ruary, A. D. eighteen hundred and fifty-five, and 79th year of the independence of the United States of America.

W. P. DE NORMANDIE,
Clerk.

Return.

The marshal's return, upon which is endorsed in words, to wit:

Received on the 15th day of March, 1855, and executed on the 19th day of March, 1855, by handing the defendant, Pierson Carlile, a true copy of this writ and a certified copy of the petition in this cause, in Milam county, 50 miles from Austin city.

BEN. McCULLOCH, *U. S. M.*
By J. HARRELL, *Deputy.*

Serving writ.....	$2 00
Travel 50 miles, 6.....	3 00
	$5 00

The return filing is endorsed in words, to wit:
Filed July 30th, 1855.

W. P. DE NORMANDIE, *Cl'k.*

Citation to J. J. Bangs.

Citation to J. J. Bangs is endorsed in words, to wit:

United States District Court.

MIGUEL DAVILA
vs. } L. 104.
DAVID MUMFORD et als.

Citation for J. J. Bangs. Issued February 27th, 1855.

W. P. DE NORMANDIE, *Clerk.*

And is in words, to wit:

United States District Court, district of Texas.

The President of the United States to the Marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon J. J. Bangs, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Austin, on the third Monday of November next, to answer to the petition and complaint of

Miguel Davila against David Mumford, G. J. Graham, Peter Server, John Deleshamet, A. W. Sillavin, Peter Lower, Lewis Taylor, Beverly Pool, Hugh McKean, Pierson Carlile, and J. J. Bangs, in an action of trespass to try title to land, to plaintiff's damage thirty thousand dollars; of which you will serve the said defendant, J. J. Bangs, with the accompanying copy of said petition.

Witness the Hon. John C. Watrous, judge of said court, and seal of court, at the city of Austin, this 27th day of February, A. D. eighteen hundred and fifty-five, and 79th year of the independence of the United States of America.

[SEAL.]

W. P. DE NORMANDIE, *Clerk.*

Return.

The marshal's return is endorsed in words, to wit:

Received on the 15th day of March, 1855, and executed on the 30th day of March, 1855, by handing the defendant, J. J. Bangs, a true copy of this writ and a certified copy of petition in this cause, in Bell county, 50 miles from Austin city.

BEN. McCULLOCH, *U. S. M.*
By J. HARRELL, *Deputy.*

Serving writ.....	$2 00
Travelled 50 miles, 6 cts.....	3 00
	$5 00

The return filing is endorsed in words, to wit:

Filed July 30th, 1855.

W. P. DE NORMANDIE, *Clerk.*

Defendants' Exceptions and Answer.

And afterwards, to wit, on the 20th of November, 1855, the defendants *the defendants* filed their exceptions and answer, endorsed, to wit:

M. DAVILA
vs.
D. MUMFORD et al. } L. 104.

Exceptions and answer. Filed Nov. 20th, 1855.

W. P. DE NORMANDIE, *Clerk.*

And is in words, to wit:

United States District Court for the district of Texas, A. D. 1855.

M. DAVILA
vs.
D. MUMFORD et als.

And now come the defendants, and say that the said plaintiff

ought not to have or maintain his aforesaid action thereof against them, because they say that the matters set out in said petition, in manner and form as the same are therein stated and set forth, are not sufficient in law to entitle the plaintiff to recover, and this they are ready to verify; wherefore they pray judgment, &c.

FISK & BOWERS,
For Def'ts.

Should said exceptions be overruled the said defendants say that they are not guilty of the trespasses alleged against them by the plaintiff, and of this they put themselves upon the country.

FISK & BOWERS,
For Def'ts.

Answer of Hugh Alexander, Admin'r of Dan'l Alexander.

And afterwards, to wit, on the 23d day of November, 1855, came Hugh Alexander, administrator of the estate of Daniel Alexander, deceased, and prayed to be permitted to intervene, and file his answer and prayer, which is endorsed in words, to wit:

M. DAVILA
vs.
D. MUMFORD et al. } L. 104.

Filed Nov. 23d, 1855.

W. P. DE NORMANDIE, *Clerk.*

And is in words, to wit:

M. DAVILA
vs.
D. MUMFORD et al.

And now at this time comes Hugh Alexander, administrator of the estate of Daniel Alexander, deceased, and prays the court to admit him to come in as intervenor, as he claims a portion of the land sued for by the said plaintiff.

And for answer the said Hugh Alexander, administrator as aforesaid, says that the land formerly claimed by Augustus W. Sillivan, one of the def'ts in the above cause, was granted to George Doharty, as a colonist in the Nashville colony, by Wm. H. Steel, commissioner, &c., on the 3d day of March, 1835, and is described as follows, to wit: commencing on the south margin of the San Andrews at a stake, from which a hackberry 8 in. dia. bears S. 14° E. at 2 varas, and an ash 15 inches in dia. bears N. 84° W. at 5 varas; thence south 19° W. 2,100 varas to Dars' creek; continuing at 6,461 varas, and crossed a small creek; at 7,410 varas crossed Donaho's creek; continuing, at 10,827 varas set a stake from the S. east corner of said league, from which an oak 10 in. dia. bears S. 28° W. at 30 varas, and another oak 8 in. dia. bears

Miguel Davila against David Mumford, G. J. Graham, Peter Server, John Deleshamet, A. W. Sillavin, Peter Lower, Lewis Taylor, Beverly Pool, Hugh McKean, Pierson Carlile, and J. J. Bangs, in an action of trespass to try title to land, to plaintiff's damage thirty thousand dollars; of which you will serve the said defendant, J. J. Bangs, with the accompanying copy of said petition.

Witness the Hon. John C. Watrous, judge of said court, and seal of court, at the city of Austin, this 27th day of February, A. D. eighteen hundred and fifty-five, and [SEAL.] 79th year of the independence of the United States of America.

W. P. DE NORMANDIE, *Clerk.*

Return.

The marshal's return is endorsed in words, to wit:

Received on the 15th day of March, 1855, and executed on the 30th day of March, 1855, by handing the defendant, J. J. Bangs, a true copy of this writ and a certified copy of petition in this cause, in Bell county, 50 miles from Austin city.

BEN. McCULLOCH, *U. S. M.*
By J. HARRELL, *Deputy.*

Serving writ.....	$2 00
Travelled 50 miles, 6 cts.....	3 00
	$5 00

The return filing is endorsed in words, to wit:

Filed July 30th, 1855.

W. P. DE NORMANDIE, *Clerk.*

Defendants' Exceptions and Answer.

And afterwards, to wit, on the 20th of November, 1855, the defendants *the defendants* filed their exceptions and answer, endorsed, to wit:

M. DAVILA
vs. } L. 104.
D. MUMFORD et al.

Exceptions and answer. Filed Nov. 20th, 1855.
W. P. DE NORMANDIE, *Clerk.*

And is in words, to wit:

United States District Court for the district of Texas, A. D. 1855.

M. DAVILA
vs.
D. MUMFORD et als.

And now come the defendants, and say that the said plaintiff

ought not to have or maintain his aforesaid action thereof against them, because they say that the matters set out in said petition, in manner and form as the same are therein stated and set forth, are not sufficient in law to entitle the plaintiff to recover, and this they are ready to verify; wherefore they pray judgment, &c.

FISK & BOWERS,
For Def'ts.

Should said exceptions be overruled the said defendants say that they are not guilty of the trespasses alleged against them by the plaintiff, and of this they put themselves upon the country.

FISK & BOWERS,
For Def'ts.

Answer of Hugh Alexander, Admin'r of Dan'l Alexander.

And afterwards, to wit, on the 23d day of November, 1855, came Hugh Alexander, administrator of the estate of Daniel Alexander, deceased, and prayed to be permitted to intervene, and file his answer and prayer, which is endorsed in words, to wit:

M. DAVILA
vs. } L. 104.
D. MUMFORD et al.

Filed Nov. 23d, 1855.

W. P. DE NORMANDIE, *Clerk.*

And is in words, to wit:

M. DAVILA
vs.
D. MUMFORD et al.

And now at this time comes Hugh Alexander, administrator of the estate of Daniel Alexander, deceased, and prays the court to admit him to come in as intervenor, as he claims a portion of the land sued for by the said plaintiff.

And for answer the said Hugh Alexander, administrator as aforesaid, says that the land formerly claimed by Augustus W. Sillivan, one of the def'ts in the above cause, was granted to George Doharty, as a colonist in the Nashville colony, by Wm. H. Steel, commissioner, &c., on the 3d day of March, 1835, and is described as follows, to wit: commencing on the south margin of the San Andrews at a stake, from which a hackberry 8 in. dia. bears S. 14° E. at 2 varas, and an ash 15 inches in dia. bears N. 84° W. at 5 varas; thence south 19° W. 2,100 varas to Dars' creek; continuing at 6,461 varas, and crossed a small creek; at 7,410 varas crossed Donaho's creek; continuing, at 10,827 varas set a stake from the S. east corner of said league, from which an oak 10 in. dia. bears S. 28° W. at 30 varas, and another oak 8 in. dia. bears

S. 63° W. at 3 varas; thence N. 71° W. 1,300 varas, and crossed a small creek; continued 2,500 varas to a stake for the S. W. corner of said league, from which an oak 15 in. dia. bears N. 51° W. at 16 vs., and another oak 10 in. dia. bears S. 85° E. at 4 varas; thence N. 19° E. 2,160 varas, and crossed Donaho's creek; continuing 9,992 varas, and set a stake on the S. margin of said river for the N. W. corner of said league, from a pecan 12 in. dia. bears S. 29° E, 9 varas, and another tree 15 in. dia. bears N. 89° W. at 2 varas; thence with the meanders of the river to the beginning; that his said intestate has been in the peaceable possession of said land three years previous to the commencement of this suit, claiming one-half of said league directly from said Doherty, and the other half by transfer from said Sillivan, who claimed the other half by virtue of a purchase at an administrator's sale of the estate of said Doherty, deceased, and this he is ready to verify; wherefore he prays judgment, &c.

And for further answer this defendant, Daniel Alexander, says, that he was in possession of said land as above described for more than three years before the commencement of this suit, under a color of title emanating from the government as aforesaid, and this he is ready to verify; wherefore he prays that he may be quieted in his possession of said land, and that the same may be decreed to said estate, and that he have his costs, &c. And for further answer this defendant says, that his said intestate was in the peaceable possession of said land for more than five years before the commencement of this suit, under color of title, and that since the death of said Daniel Alexander, he has been in the possession of the same as administrator as aforesaid, and this he is ready to verify; wherefore he prays judgment, &c.

And for further answer this defendant says, that the said Daniel Alexander was in the peaceable possession of said land for more than ten years previous to the commencement of this suit, and since the death of said Daniel he has held the same as his administrator, and this he is ready to verify; wherefore he prays judgment, &c.

FISKE & BOWERS,
For Def't.

And the said defendant suggests to the courts, that he and those persons whose estate he has in the lands and tenements sued for, have had adverse possession of the same in good faith for at least one year next before the commencement of this suit, and that he and those persons whose estate he has, have made permanent improvements on the lands sued for during the time they have had possession of the same, to wit, to the value of ten thousand dollars,

which he prays may be allowed him in case that there is a judgment against him for said land.

FISKE & BOWERS,
For Def'ts.

Disclaimer of Beverly Pool.

And afterwards, to wit, on the 24th day of November, 1855, Beverly Pool, one of the defendants, by Fisk, Bowers & Armstrong, their attorneys, filed a disclaimer, which is endorsed, to wit:

M. DAVILA
vs.
D. MUMFORD et al. } L. 104.

Disclaimer of Beverly Pool. Filed Nov. 24th, 1855.
W. P. DE NORMANDIE, *Clerk.*

And which disclaimer is in words as follows:

U. S. District Court.—1855.

M. DAVILA
vs.
D. MUMFORD et al.

And now, at this time, comes Beverly Pool, one of the defendants in the above cause, and says, that he does not own any land, neither has he any claim to any land embraced within the limits of the land as described in the plaintiff's said petition, and hereby disclaims owning any of the land mentioned in said plaintiff's petition, and that he did not own any of said land at the commencement of said suit, or at any other time. Wherefore he prays that he may be discharged, and that he recover his costs, &c.

FISK, BOWERS & ARMSTRONG,
For said Defendant.

Motion of Jesse Mumford to be made party Def't.

And afterwards, to wit, on the first day of December, A. D. 1855, one Jesse Mumford, by his attorney, N. G. Shelly, filed his motion to be made a party defendant for Lewis Taylor, which is endorsed in words, to wit:

MIGUEL DAVILA
vs.
DAVID MUMFORD et al. } L. 104.

Motion of Jesse Mumford to be made a party defendant for Lewis Taylor. Filed December 1st, 1855.
W. P. DE NORMANDIE, *Clerk.*

And which motion is in words, as follows:

MIGUEL DAVILA
vs.
DAVID MUMFORD et al.

In United States District Court for the district of Texas, sitting at Austin—November, 1855.

Comes into court Jesse Mumford, and representing to the court that he is the owner of a half league of land, on which the said Lewis Taylor, defendant, resides; that the said Taylor is tenant at will, under him, the said Mumford; thereupon moves the court that he be made a party defendant to this suit, and permitted to defend for and instead of the said Lewis Taylor.

Respectfully,
JESSE MUMFORD,
By N. G. SHELLY, *Atto.*

Special Answer of David Mumford.

And on the same day, to wit, on the first day of December, A. D. 1855, David Mumford, one of the defendants herein, by his attorney, N. G. Shelly, filed his answer, which is endorsed in words, to wit:

MIGUEL DAVILA
vs.
DAVID MUMFORD et al. } L. 104.

Special answer of David Mumford. Filed December 1st, 1855.
W. P. DE NORMANDIE, *Cl'k.*

Said answer is in words, to wit:

MIGUEL DAVILA
vs.
DAVID MUMFORD et al.

In United States District Court for the district of Texas, sitting at Austin—November Term, 1855.

And now comes the defendant, David Mumford, by attorney, and for further and special answer to plaintiff's petition filed in this cause, leave of the court for that purpose being first had and obtained, says that the said plaintiff ought not to have or maintain his said action against him, the said defendant, because he says that the said tract of land mentioned in the plaintiff's petition, or so much thereof as is hereinafter described, is now, and was at the time of the supposed trespass and eviction of the said plaintiff, the head-right league granted to him as one of the colonists in Robertson's colony, under and by virtue of a title duly executed by one William H. Steele, commissioner for said colony, and dated March 20th, A. D. 1835; said head-right league being described and designated as follows, to wit: commencing at the northeast corner of the quarter league No. 1, at a stake, from which a hack-

berry 7 in. dia. bears N. 80° west at 9 varas, and ash 10 in. dia. bears S. 89° E. at 4 varas; thence south 19° west 4,967 varas, to the S. E. corner of the quarter league No. , a stake, from which an oak 15 in. bears S. 47½° W. at 16½ varas, and an elm 12 in. dia. bears S. 50° E. 11 varas; thence north 71° W. 1,250 varas, to the S. W. corner of said quarter league, an oak 12 in. dia. bears, marked as corner; thence south 19° west, 3,180 varas, crossed Donahoe's creek; at 4,146 varas set a stake for the S. W. corner of said league, from which an elm 6 in. dia. bears N. 18° west at 32 varas; thence S. 71° E. 1,300 varas crossed a small creek; at 2,236 varas crossed the second small creek; at 2,820 varas crossed the creek, at 3,750 varas, and set a stake for the N. E. corner of said league, from which an oak 15 in. dia. bears S. 11° W. at 16 varas, and an elm 8 in. dia. bears S. 57° W. at 14 varas; thence north 19° east 1,620 varas, and crossed a creek; at 1,720 varas crossed Donaho's creek; 6,736 varas made a corner on a hackberry 15 in. dia., marked as corner; thence with the meanders of the river to the beginning, comprising one league of land. And the said defendant avers that he held, occupied and possessed the said land herein above described, peaceably and without interruption, for a long period of time—that is to say, for more than ten years next before the commencement of this said plaintiff's action against him; that he, the said defendant, has gone on in good faith to make valuable improvements upon his said head-right league, for the comfort and support of himself and family; that said league of land has been his home and the name of his family for and during the said period of ten years; that he has erected his family residence and out-houses, stables and stock lots, and opened, cleared and enclosed a large farm on said land, and has cultivated the same during the said period of ten years next before the commencemen of plaintiff's said action against him. All which said defendant is ready to verify, &c.

And the defendant, David Mumford, for further answer, like leave of the court being had, &c., says that the said plaintiff ought not to have or maintain his aforesaid action for the supposed trespass and eviction of him, the said plaintiff, against him, the said defendant; because, he says that he has had peaceable possession of his said head-right league of land, described above in his foregoing answer, and has cultivated and enjoyed the same and paid the taxes thereon for more than five years next before the commencement of the said plaintiff's action against him, under and by virtue of a deed or testimonial of title issued to him by William H. Steele, commissioner of Robertson's colony, duly authorized and empowered to issue the same, on the 20th day of March, 1835, and that said deed or testimonial of title was duly recorded in the office of the clerk of the county court and county recorder for the county of Milam, in the then republic of Texas, for more than five years

next before the commencement of plaintiff's suit as aforesaid, against him. All which said defendant is ready to verify; wherefore he prays judgment, &c.

N. G. SHELLY,
Atto. for David Mumford.

Special Answer of Jesse Mumford.

And afterwards, to wit, on the third day of December, A. D. 1855, Jesse Mumford, by his attorney, N. G. Shelly, filed his special answer, which is endorsed, to wit:

MIGUEL DAVILA
vs.
DAVID MUMFORD et al. } L. 104.

Special answer of Jesse Mumford. Filed December 3d, 1855.
W. P. DE NORMANDIE, *Clerk.*

Said answer is in words as follows:

In United States District Court for the district of Texas, sitting at Austin—November Term, 1855.

MIGUEL DAVILA
vs.
DAVID MUMFORD et al.

And now comes Jesse Mumford, being admitted to defend for and in behalf of Lewis Taylor, on motion to the court for that purpose, and for further and special answer to the allegations of plaintiff's petition, filed in this cause, leave of the court being first had, &c., says that the said plaintiff ought not to have or maintain his said action against him for the supposed trespass and eviction mentioned in plaintiff's petition; because, he says that he has been in peaceable possession of the one-half of the following described tract of land for more than five years next before the commencement of plaintiff's said action, to wit: commencing on the south margin of San Andres river at a pecan, 6 in. dia., marked as corner, from which a tree 30 in. dia. bears N. 79° E., at 6 varas, and a hackberry, 30 in. dia., bears S. 86° west, 4½ varas; thence S. 19° west, 7,580 varas, and crossed Donahoe's creek; at 1,084 varas, set a stake for the S. E. corner of said league, from which an elm, 6 in. dia., bears S. 84° E., at 38 varas, and another elm, 6 in. dia., bears S. 54° E., at 39 varas; thence 71° west, 2,500 varas to league No. 1; thence north 19° east, at 2,917 varas, crossed Donahoe's creek; continued and crossed a small creek, at 6,784 varas; continued and crossed Dars' creek, 8,884 varas, making the whole distance 10,091 varas, and set a stake for the N. E. corner of league No. 1, from which a hackberry, 8 in. dia., bears S. 14° east, at 2 varas, and an ash, 15 in. dia., bears N. 84° W., 5 varas; thence with the meanders of the river to the begin-

ning, comprising one league of land; that the said one-half of said league is the same now occupied by one Lewis Taylor, as tenant of the defendant, and who is made party defendant by plaintiff's petition; that the whole of said league was granted to said defendant by title, or testimonial of title, duly executed by William H. Steel, commissioner of Robertson's colony, bearing date February 25th, 1835; that said title, or testimonial of title, was duly recorded in the office of the clerk of the county court and county recorder, in and for the county of Milam, in the then republic of Texas, on the 4th day of October, A. D. 1838; that he has occupied, used and cultivated said land and paid the taxes thereon, under and by virtue of said title, or testimonial of title, so recorded as aforesaid, for a period of more than five years next before the commencement of plaintiff's said action. All which said defendant is ready to verify, &c.

And for further special answer, like leave of the court being had, &c., defendant says, that plaintiff ought not to have or maintain his aforesaid action against him, because he says that he has occupied and possessed peaceably and without interruption the said land as described in his forgoing answer for a period of more than three years next before the commencement of plaintiff's action, under and by virtue of a color of title duly authenticated and recorded in the office of the clerk of the county court of the county of Milam, in said State of Texas; that he has made valuable improvements in good faith on said land, and paid the taxes thereon, all which the said defendant is ready to verify; wherefore he prays judgment, &c.

N. G. SHELLY,
Atto. for Jesse Mumford.

Continuance.

And on the same day, to wit, on the third day of December, A. D. 1855, as appears by the record, this cause was continued in words, to wit:

MIGUEL DAVILA
vs.
DAVID MUMFORD et al. } L. 104.—"Continued."

Affidavit and Notice to Davila and his Att'ys.

And afterwards, to wit, on the second day of February, A. D. 1856, as appears by the certificate of the clerk, there was filed notice to Davila and his attorneys, endorsed, to wit:

MIGUEL DAVILA
vs.
DAVID MUMFORD et al.

Notice to Davila and his att'ys, endorsed Filed Feb. 2d, 1856.
W. P. DE NORMANDIE, *Clerk.*

In words, to wit:

In District Court of the United States for the district of Texas.

MIGUEL DAVILA
vs.
DAVID MUMFORD et al.

Personally appeared before me, the undersigned, clerk of the district court of the United States for the district of Texas, sitting at Austin, N. G. Shelly, attorney for David Mumford et al., who having duly sworn, makes oath, that Benjamin Bryant is a material witness for the defendants, David and Jesse Mumford; that the said Benjamin Bryant resides, as he is informed and believes, in Milam county, and is old and infirm; affiant is informed and believes that the said Bryant is and has been for some time in feeble health, and probably in the course of nature will not survive until the trial of the above stated case, and if alive will not be able to attend in person at the trial.

N. G. SHELLY.

Sworn to and subscribed before me, this the 2 day of February, A. D. 1856.

W. P. DE NORMANDIE,
U. S. Commission.

To MIGUEL DAVILLA or his Att'ys,
ALLEN & HALL and M. M. POTTER.

GENT: Take notice that interrogatories are on file in the office of the clerk of the district court of the United States for the district of Texas, sitting at Austin, to be propounded to Benjamin Bryant, a material witness for the defendants, Mumfords, who is a citizen of Milam county, and is aged and infirm. You can file your cross-interrogatories if you desire. A commissioner will issue to the commissioners appointed to take testimony in said county of Milam so soon as allowed by law to take the testimony of the said Bryant—all answers to said interrogatories.

Austin, Feb'y 1st, 1856.

Respectfully,

N. G. SHELLY,
Atto. for Mumfords et al.

Also endorsed:

I acknowledge service of the within notice, but object to the legality of the proposed proceeding in all respects.

Feb. 2d, 1856.

M. M. POTTER.

Interrogatories to Benjamin Bryant.

There *was* also filed at the same time, to wit, on the 2d of Feb-

ruary, 1856, interrogatories to Benjamin Bryant, endorsed as follows:

MIGUEL DAVILA
vs.
DAVID MUMFORD et al. } L. 104.

Interrogatories propounded to Benj. Bryant, a witness for defendants.

Filed Feb. 2, 1856.

W. P. DE NORMANDIE, *Clerk.*

And in words as follows:

MIGUEL DAVILLA
vs.
DAVID MUMFORD,
JESSE MUMFORD et al.

Interrogatories to be propounded to Benjamin Bryant, a material witness in behalf of defendants in the above entitled cause now pending in the United States district court for the district of Texas, sitting at Austin, in said State, said witness, Bryant, residing in the county of Milam, in the State of Texas, and being old and infirm, and in very feeble health. The answers to which interrogatories will be read in evidence in behalf of said defendants, on the trial of said cause.

Interrogatory 1st. Are you acquainted with the plaintiff and the defendants, David Mumford, Jesse Mumford and A. W. Sillivan, in this cause? If yea, how long have you known them, and where do they reside?

Int. 2d. Are you acquainted with any or all of the land claimed by the defendants in this suit? if you say you are, state where said land lies. Are you acquainted with the head-right leagues of David and Jesse Mumford; where are they situated? state by whom and how they are occupied. Where does the said David Mumford reside? How long has he been residing there? If you say the said David is residing upon his head-right league, state when he first took possession of the same and commenced improvements upon it. What improvements has the said David Mumford made upon his said head-right league?

Int. 3d. How long has it been since Jesse Mumford first occupied and improved the land claimed by him? When did he first commence improving upon said land? Who is living on said land, and how long has he been living there?

Int. 4th. Are you acquainted with the metes and bounds of the said David and Jesse Mumford's land? If you are, give them in your answer to this interrogatory.

Int. 5th. Are you acquainted with the tract of land owned or claimed by the def't A. W. Sillivan, and which is said to be a part

of the land sued for by the plaintiff in this action? If you say you are, how long have you known said tract of land, and how long has the said Sillivan been in possession of the same? Where is said tract of land situated?

Int. 6th. State fully all you know in relation to the possession and occupation of the land owned by the said David and Jesse Mumford, and what persons are now occupying the same, and who were in possession of said land on the 12th day of February, 1855, and how long said persons had been in possession of said land before that time.

Int. 7. State fully anything further you may know that will benefit the defendants, David and Jesse Mumford and A. W. Sillivan.

N. G. SHELLY,
Attorney for Defendants, Mumfords et al.

Note by the Clerk.

Note by the Clerk.—It does not appear by the records that any commission issued on the foregoing notice and interrogatories. The defendants' attorneys proceeded subsequently and took the deposition of Benjamin Bryant de bene esse, as set forth in plaintiff's bill of exceptions.

Order of Continuance.

And afterwards, to wit, at the November term, 1856, the following entry appears of record upon the minutes of the court in words, as follows:

MIGUEL DAVILA
vs.
DAVID MUMFORD et al. } 104.—"Continued."

Interrogatories to Jesse Bryant.

And afterwards, on the 4th day of December, A. D. 1856, the defendants filed interrogatories to Jesse Bryant, endorsed Law, 104.

MIGUEL DAVILA
vs.
DAVID MUMFORD et al.

Interrogatories to Jesse Bryant; filed Dec. 4th, 1856.
W. P. DE NORMANDIE, *Cl'k.*

The interrogatories are set forth in plaintiff's bill of exceptions, with commission, &c., &c., pages .

David Mumford's Amended Answer.

And afterwards, to wit, on the 3d day of June, 1857, the defendant, David Mumford, filed his amended answer, endorsed, to wit:

MIGUEL DAVILA
vs.
DAVID MUMFORD et als. } L. 104.

Amended answer of David Mumford. Filed June 3d, 1857.
MATTHEW HOPKINS,
Clerk.

Which amended answer of David Mumford is in words, to wit:

In U. S. District Court, western district of Texas, at Austin.

MIGUEL DAVILA
vs.
DAVID MUMFORD et als.

And now comes the defendant, David Mumford, and leave of the court having been first had and obtained, he amends his answer heretofore filed in this case, and for such amendment, and in lieu and place of his former answer, he pleads and answers as follows:

1st. That he disclaims all right, title, or interest in any part of the premises demanded in plaintiff's petition, and denies that he ever entered upon, possessed, or in any manner interfered with, or set up claim or right thereto, except to the league of land granted this defendant as a colonist head-right in Robertson's colony, by the commissioner, Wm. H. Steele, on the 20th day of March, 1835, which said grant, and the metes and bounds thereof, are more fully set forth and described in defendant's amended answer, filed in this cause the 1st Dec'r, 1855, here referred to, and made part of this answer, and to all and every other part of the demanded premises this defendant enters this his disclaimer thereto, and prays to be dismissed with his costs.

2d. That this defendant is not guilty of the supposed trespass and ejectment alleged against him in manner and form as stated, and charged in plaintiff's petition, and of this he puts himself on the country.

3d. That this defendant has had and held the actual, adverse, and peaceable possession in his own right of the said league of land mentioned and described in his first plea herein, for more than three years continuously next before the commencement of this suit, under direct title to him from the sovereignty of the soil; and that plaintiff's cause of action, if any he has, against this defendant accrued more than three years next before the commencement of this suit, which he is ready to verify. Wherefore he prays judgment, &c.

4th. That this defendant has had and held the actual, adverse, and peaceable possession in his own right of the said league of land for more than three years continuously next before the commencement of this suit under color of title; and that plaintiff's

cause of action, if any he has, accrued more than three years before the commencement of this suit, which he is ready to verify. Wherefore he prays judgment, &c.

5th. That this defendant has had and held the actual, adv erse, and peaceable possession in his own right of the said league of land, cultivating, using, and enjoying the same, and paying tax thereon, and claiming the same under a deed duly registered, for more than five years next before the commencement of this suit; and that plaintiff's cause of action, if any he has, against this defendant accrued more than five years next before the commencement of this suit, which he is ready to verify. Wherefore he prays judgment.

6th. That this defendant has had and held the actual, adverse, and peaceable possession in his own right of the said league of land, holding and claiming the same by known definite metes and bounds, and by deed during that time; and that said plaintiff has not made entry on said league of land for more than ten years next before the commencement of this suit; and that his cause of action for the recovery of said league of land from this defendant, if any he has, accrued more than ten years next before the commencement of this suit, all which he is ready to verify. Wherefore he prays judgment, &c.

7th. That this defendant had adverse possession of the said league of land in good faith for more than one year previous to this suit, and made improvements thereon, as stated in his said answer filed 1st December, 1855, of the value of five thousand dollars, for which he prays allowance and compensation should

BALLINGER & SHELLY,
For Defendants, Mumfords.

Jesse Mumford's Amended Answer.

And on the same day, to wit, on the third day of June, A. D. 1858, the defendant, Jesse Mumford, by his attorneys, Ballinger & Shelly, filed his amended answer, which is endorsed, to wit:

MIGUEL DAVILA
vs. } L. 104.
DAVID MUMFORD et als.

Amended answer of JesseMumford. Filed June 3d, 1857.
MATTHEW HOPKINS, *Clerk.*

Which answer of said Jesse Mumford is in words, to wit:

In U. S. District Court, western district of Texas, at Austin.

MIGUEL DAVILA
vs. } 104.
DAVID MUMFORD et al.

And now comes the defendant, Jesse Mumford, leave of the court

first having been had and obtained, and amends his answer heretofore filed in this cause, and for amendment and in place and stead of his former answer he pleads and says as follows:

1st. That he disclaims all right, title, or interest in any part of the premises demanded in plaintiff's petition, and denies that he ever entered upon, possessed, or in any manner interfered with, or set up claim or right thereto, except to the half league of this headright league of land granted this defendant as a colonist in Robertson's colony by the commissioner, William H. Steele, on the day of A. D. 1835, which said grant and the metes and bounds thereof are more fully set forth and described in defendant's amended answer filed in this cause Dec. 3d, 1855, here referred to and made a part of this answer; and as to all and every other part of the demanded premises this defendant enters this his disclaimer thereto, and prays to be dismissed with his costs.

2d. That this defendant is not guilty of the supposed trespasses and eviction alleged against him in manner and form as stated and charged in plaintiff's petition, and of this he puts himself on the country.

3d. That this defendant has had and held the actual, adverse, and peaceable possession in his own right of the said half league of land mentioned and described in his first plea herein for more than three years continuously next before the commencement of this suit, under direct title to him from the sovereignty of the soil, and that plaintiff's cause of action, if any he has against this defendant, which is denied, accrued more than three years next before the commencement of this suit, which he is ready to verify; wherefore he prays judgment, &c.

4th. That this defendant has had and held the actual, adverse, and peaceable possession in his own right of the said half league of land for more than three years continuously next before the commencement of this suit under color of title, and that plaintiff's cause of action, if any he has, accrued more than three years before the commencement of this suit, which he is ready to verify; wherefore he prays judgment, &c.

5th. That this defendant has had and held the actual, adverse, and peaceable possession in his own right of the said half league of land, cultivating, using, and enjoying the same, and paying tax thereon, and claiming the same under a deed duly recorded for more than five years next before the commencement of this suit, and that plaintiff's cause of action, if any he has against this defendant, accrued more than five years next before the commencement of this suit, which he is ready to verify; wherefore he prays judgment, &c.

6th. That this defendant has had and held the actual, adverse, and peaceable possession in his own right of the said half league of land, holding and claiming the same by known and definite

metes and bounds and by deed during that time, and that said plaintiff has not made entry in said half league of land for more than ten years next before the commencement of this suit, and that his cause of action for the recovery of said land from this defendant, if any he has, accrued more than ten years next before the commencement of this suit, all which he is ready to verify; wherefore he prays judgment, &c.

7th. That this defendant had adverse possession of the said half league of land in good faith for more than one year previous to the commencement of this suit, and made valuable and permanent improvements thereon, as stated in his said answer heretofore filed, to wit, of the value of three thousand dollars, all which he is ready to verify; and therefore prays for the allowance of compensation for said improvements, should the plaintiff be adjudged entitled to recover the premises claimed and possessed by this defendant.

SHELLY & BALLINGER,
For Def't.

Agreement of Parties as to Filing Deeds.

And on the same day, to wit, on the third day of June, A. D. 1857, the following agreement was filed, endorsed, to wit:

DAVILA
vs. } L. 104.
MUMFORD et al.

Filed June term, 1857.

M. HOPKINS, *Clerk.*

And in words. to wit:

U. S. D. C., Austin—June Term, 1857.

M. DAVILA
vs. } No. 104.
D. MUMFORD et als.

The filing of the following documents three days before trial, and notice, as required by the statute of this State, are waived, and the said documents are to be received with like effect as if duly filed and notice given:

1. Paper purporting to be copy of title in the Spanish language, to Miguel Davila, for eleven leagues of land, from the land office.

2. Paper purporting to be a testimonio of title in favor of David Mumford, for one league of land.

3. A like paper, purporting to be a testimonio of title in favor of Jesse Mumford.

BALLINGER & SHELLY.
Att'ys for David Mumford.
SHELLY, *for Jesse Mumford.*
ALLEN & HALL, *for Pl'ffs.*

Entry.

And on the same day, to wit, on the 3d day of June, A. D. 1857, there appears the following entry upon the minutes of the court:

MIGUEL DAVILA
vs. } 104.
DAVID MUMFORD et al.

On this day came the parties aforesaid, by their attorneys, and set this cause for trial on the morrow, the defendants having, for cause, first shown leave of the court to amend their answers heretofore filed.

Instructions asked by Pl'ffs.

And now, to wit, on the fourth day of June, A. D. 1858, the cause being called, and the defendants, Jesse and David Mumford, having severed from the rest of the defendants by consent of all parties, the evidence and argument having been closed, the plaintiffs filed the following instructions to the jury, asked by them, which paper is endorsed, to wit:

MIGUEL DAVILA
vs. } 104.
DAVID MUMFORD et als.

Instructions to the jury, requested by plaintiff. Filed June 4th, 1857. MATTHEW HOPKINS, *Cl'k.*

And is in words, to wit:

MIGUEL DAVILA
vs. } Charges requested by plaintiff.
DAVID MUMFORD et al.

The presiding judge is requested to charge the jury:

1st. That the Spanish copy of the title to eleven leagues of land, under the seal of the General Land Office, and the translation thereof, also under the seal of the same, read by the plaintiff, connected with the admission contained in the respective answers of the said defendants, amount to sufficient evidence to establish the title of the pl'ff in the eleven leagues of land described in his petition, and the jury ought so to regard the same, in the absence of any rebutting or adverse proof advanced by the defendants.

2d. That the several depositions read in evidence by the defendants, nor either of them, ought to be considered by the jury in making up their verdict.

3d. That, under the plea of three years' possession, under the act of limitations, contained in the respective answers of the defendants, no evidence is admissible of any matter which is only properly cognizable on the equity side of this court.

4th. That, under the plea of five years' possession, contained in each of s'd answers, the testimonios offered in evidence by the def'ts are not to be considered by the jury.

5th. A second title, obtained by the original grantee thereof when he had notice, either actual or constructive, of the existence of a prior title to the same land, in whatever manner perfected, is void; and a prior title, deposited in the proper public office or archives, is such notice.

6th. That, under the defence of three years' possession, the defendants cannot recover unless they show a title, or a color of title, under which they claim, fairly and in good faith, emanating or derived from the sovereignty of the soil, and no title, or color of title, can possess the requisite fairness and good faith when a prior title to the same land, emanating from the same, exists.

7th. That the testimonios under which the defendants claim are not deeds duly registered.

8th. That, under their pleas of ten years' possession, contained in their said answers, the defendants cannot recover, if it appear that they claim under title, or color of title, emanating from the government or sovereignty of the soil.

E. ALLEN, *for Pl'ff.*

And endorsed, to wit:

Judge's Endorsed Ruling.

I give the 1st, 3d, and 8th instructions above asked, and refuse the rest.

T. H. DUVAL,
Dist. Judge, &c.

Charge.

And now the court proceeded to charge the jury in a written charge herein filed and endorsed, to wit:

MIGUEL DAVILA
vs.
DAVID MUMFORD et al. } No. L. 104.

Charge. Filed June 4th, 1858.

MATTHEW HOPKINS, *Cl'k.*

And is in words as follows:

MIGUEL DAVILA
vs.
DAVID MUMFORD et al. } Charge of the Court.

GENTLEMEN OF THE JURY: This is an action of trespass to try title. The rights of two of the defendants alone (David and Jesse Mumford) are now in issue before you. The plaintiff and defendants both claim under titles emanating from the sovereignty of the soil; but that of the plaintiff is the elder in point of date, and its validity not having been brought in question, must be regarded as paramount to those of the defendants, provided the claims set up by the latter be not protected and sustained by the limitation laws

of this State, as pleaded by them in their defence. The most material of these pleas, as I conceive, are those which set up the bar of three and five years, and it is these alone which I shall notice in my charge in chief to the jury.

If the jury believe, from the evidence before them, that the defendants, or either of them, had and held the actual adverse peaceable possession in their own right of the lands respectively claimed by them for more than three years continuously, next before the commencement of this suit, under color of title, and that the plaintiff's cause of action accrued more than three years before the commencement of this suit, then the jury will find for the defendant or defendants.

And further, if the jury believe, from the evidence, that the defendants, or either of them, have had and held the actual adverse and peaceable possession in their own right of the lands claimed by them respectively, cultivating, using and enjoying the same, and paying tax thereon, and claiming the same under a deed or deeds, duly recorded for more than five years next before the commencement of this suit, and that plaintiff's cause of action accrued more than five years before the commencement of such suit, then they will find a verdict for such defendant or defendants.

THO. H. DUVAL,
U. S. Dist. Judge.

Verdict and Entry.

And the jury having retired under the charge of an officer of the court, returned with their verdict; and thereupon appears of record upon the minutes of the court the following entry:

MIGUEL DAVILA
vs.
DAVID MUMFORD et al. } No. 104.

Now on this day came the parties, by their attorneys, and of the defendants, Beverly Pool having filed his disclaimer of all right, title, or interests in the premises sued for, the plaintiff discontinues his suit against said defendant.

The demurrer to the petition was argued and overruled by the court.

By agreement of all parties, the defendants, David and Jesse Mumford, were permitted to sever from the other defendants in their defence and trial; and thereupon the cause, as to the other defendants, was continued until the next term of the court, as upon defendants' affidavits. And the cause proceeding to trial between the plaintiffs and the said defendants, David and Jesse Mumford, and thereupon came a jury, to wit:

Wm. H. Carr, William A. Gold, George W. Classcock, John D. Kerfoot, Robert Atchison, Alvin M. Dean, William W. Grover,

James D. Easton, Samuel B. Savage, Robert Bean, Narcissa Leal, James D. Swisher, who having been duly sworn to try the issues thereof, and having heard the evidence and received the instructions and charge of the court, retired, and ret'd with the following verdict:

Verdict.

"We, the jury, find a verdict in favor of the defendants.

"G. W. GLASSCOCK,
"*Foreman.*"

Motion for New Trial and Order.

And now delay being granted before the rendition of judgment, to enable the plaintiff to prepare his bill of exceptions already noted, to wit, on the eighth day of June, A. D. 1858, the plaintiff filed his motion for a new trial, endorsed, to wit:

MIGUEL DAVILA
vs. } 104.
DAVID MUMFORD et al.

Motion for new trial. Filed June 8th, 1858.

MATTHEW HOPKINS,
Clerk.

Which motion is in words, to wit:

D. C. U. S. W. Dist. Texas—June Term, 1857.

MIGUEL DAVILA
vs. } No. 104.
DAVID MUMFORD et al.

And now, after verdict and before judgment in the above entitled cause, the plaintiff moves the court that the said verdict be set aside and for a new trial therein, because the said verdict is against evidence; and further, because the same was rendered without evidence to support it.

By ALLEN & HALL,
His Att'ys.

And upon the motion docket there appears to the aforesaid motion the following entry: "Overruled by court same day as filed."

MATTHEW HOPKINS, *Clerk.*

Judgment.

And now, to wit, the day last aforesaid, the plaintiff having first filed his bill of exceptions hereinafter set forth, there appears appended to the former entry of the fourth of June, the judgment of the court in words, to wit: "And after delay granted for the purpose of preparing exceptions by the plaintiff, now, to wit, on the eighth day of June, A. D. 1857, it is considered by the court, that the plaintiff take nothing by his suit; that the defendants,

David Mumford and Jesse Mumford, go hence without day, and recover of the plaintiffs all their costs in and about this suit expended, which are taxed at dollars and cents, and for which execution may issue. The plaintiff's bill of exceptions, with the endorsements, filing, &c. &c., is in words, to wit:

Plaintiff's Bill of Exceptions.

And afterwards, to wit, on the eighth day of June, A. D. 1857, the plaintiff by his attorneys, Mess. Allen & Hall, filed his bill of exceptions, duly signed, sealed and allowed by the Hon. Thomas H. Duval, judge of said court, which bill of exceptions is endorsed in words, to wit:

MIGUEL DAVILA
vs.
DAVID MUMFORD et al. } No. 104.

Pl'ff's bill of exceptions. Filed June 8th, 1857.
MATTHEW HOPKINS, *Clerk*.

And which is in words as follows:

Dist. Court of the U. States for the western district of Texas, at Austin—June Term, 1857.

MIGUEL DAVILA
vs.
DAVID MUMFORD et al. } No. 104.

Be it remembered, that on the trial of this case between the plaintiff, said Miguel Davila, and the said David Mumford and Jesse Mumford, two of the defendants therein, on the 4th day of June, A. D. 1857, on the issues raised by the plaintiff's petition filed on the 12th day of February, 1855, and the amended answers of the said defendants filed on the third day of June, 1857, the plaintiff, to maintain the issue on his part, read in evidence to the jury, without objection on the part of said defendants, a transcript from the general land office of the republic of Texas of the title-papers of the said Miguel Davila, tending to prove his title to eleven leagues or sitios of land situate on the San Andres or Little river, in the State of Texas, being the same described in his said petition, together with a translation thereof, certified from the general land office of the (now) State of Texas, which transcript and translation, and the authentications thereof, are in the words and figures following, to wit:

Endorsed: Copy of Title, 11 leagues, Mig'l Davila.

Spanish Title Miguel Davila.

Sello Tercero—4 Rs.

Habilitado por el estado de Coahuila y tejas para los años de 1832 y 1833. Pago el intimado en esta.

LESSASIER.

Receptoria á mi cargo 4 rs. valor del sello antecedente. Villa de Austin, 2 de Oct. de 1833.

SAMUEL M. WILLIAMS.

Señor Alcalde de la Villa de Austin:

Ape derado de Miguel Davila, natural de la ciudad Leona Vicario como mas haya lugar en derecho y bajo las protestos utiles y necesarias ante V. me presento diciende que mi parte obtene derecho con arreglo al articulo 24 de la ley de colonizacion del estado de 24 de Marzo de 1825 á onze sitios de tierra que liotorga en venta el supremo gobierno del estato con fecha trece de Julio de 1830 segun lo acredita el documento original espedido por la s'ria del mismo supremo gobierno q. accompano. Y en nombre de mi parte ruego á V. justicia mediante se serva mandar se nu posesion personal de once sitios de tierra sobre el rio San Andres por se margen meridional ó derecha y al punto donde los arroyos que llaman Buffalo creek y Donaho's creek entre el dicho rio por la margen referida cuyo terreno esta dentro de los limites de la colonia de los Señores Austin y Williams dando ellos su aprobacion: Suplicandole a demas que se sirva mandar practicar cuantos diligencias sean conducentes al interos de mi parte; en la inteligencia que opezco cultivarlos de conformidad con lo prevenido por la le y á cumplir con los demas obligaciones de la misma portanto A. V. suplico que se sirva atender a esta solicitud en que recibire gracia.

Villa de Austin, a 2 de Octubre de 1833.

VILLA DE SAN FELIPE DE AUSTIN,
3 *de Octubre, de* 1833.

Por presentado y admisido como lo pide se pasara a los Señores empresarios Austin y Williams para que manifestan su paricer acirea de esta instancia, y habido que sea su aprobacion pasara el aguneensor scientifico y principal ciud'o Francis W. Johnson a practicar las mididas de los onze sitios denunciados por el apoderado de Miguel Davila pa. qe. en vista de ellas y de la calificacion que debe hacer conforme a la ley se le estender a los titulos que le corresponden agregandose el documento original del gobierno a que se refiere asi lo mando y firmo.

LESSASSIER.

Nº 144 - fs 57 - Davila vs Mumford

Escala 4m varas cada pulgada

VILLA DE SAN FELIPE DE AUSTIN,
a 3 de Octubre, de 1833.

Conforme al articulo 9 de la contrata q. terrenos celebrada con el supremo gob'no del estado de Coahuila y Tejas, y lo provenido en el articulo adicional de los instrucciones de comisionados de fecha 25 de Abril del año de 1830 otorgamos nuestra aprobacion y consentimiento a que se posesione el apoderado de Miguel Davilla de los once sitios de tierra que solicita, segun los tiene denunciados, los cuales sore valdios.

SAMUEL M. WILLIAMS,
Por si y como apoderado de su companero.

Señor Alcalde y Comisionado:

El terreno de once sitios de tierra que tengo medida para el apoderado del ciudadano Miguel Davila esta situado sobre la margen derecha o meridional del rio San Andes al punto donde los arroyos "Buffalo creek" y Donaho's creek, entran al d'ho rio, cuyos limites linderos y mojones son en la forma siguiente principiando la medida a una estaca plantada sobre la margen de un barranco o racina de la que 4 varas al norte 59° oeste hay una encina blanca (white oak) 18 pulgados en diametro se tico uno linea al serviente glados al poniente diez y nueve mil seis cientas varas cuegando los arroyos que llaman "Clay's creek" y "Alligator creek," segun demuestra el plan hasta la esquina nora este de un terreno de seis sitios medido para Pedro Zarza, que es una estaca de la que 382 varas al sur 20 grados al poniente hay un mesquite 8 pulgadas en diametro de este punto al norte 70 grados al poniente se tiro otra linea trice mil setecientas cinquenta varas y siguiando el lindero septentrional del mencionado terreno de Zarza hasta la esquina nora oeste del mismo terreno que es una estaca en un monten de tierra en el llano, de este punto se tiro otra linea al norte 20 grados al oriente viente nul tres cientas cinquenta varas hasta el o'ho rio a una estaca de la que 5 varas al sur 53°, al oriente hay un Palo Blanco y 11 varas al norte hay un nogal, de aqui siguiendo el d'ho rio por sus vueltas abajo hasta el punto de principiar y comprende uno area plana de 275,000,000 vara cuadradras o le que es igual once sitios de tierra, y se compone segun mu leal saber y entender de dos sitios de la clase de temporal y nueve sitios de la de agostadero y su configuracion es la que demuestra el plan que acompano.

F. W. JOHNSON.

[*For plan see original, page* 57.]

EXMO S'OR: El ciudad'o Miguel Davila, natural y vicino de la ciudad de Leona Vicario, capital del departam'to de Coahuila y

Texas, con el debido respeto a V. E. hago presento q. careciendo de terrenos p'a agricultura y cria de que nados, y al mismo tiempo deseoso del aumento y piogreso de d'ho estado a V. E. ruego se digne otorganne en venta once sitios de tierra de los valdios de este departam'to junta o separados o del modo que mas me con benga, ofreciendo como ofrenzo poblarlos y cultivarlos en el modo y forma q. previene la ley. Y suplico a V. E. se sirva concederme pa. la satisfacion del importe de dichos sitios sos plazos que la misma ley espresa. Por tanto. A. V. E. pido y suplico se sirva acceder a esta mi solicitud en que recibire gracia. Leona Vicario, Julio 10, de 1830.

Ciudadano MIGUEL DAVILA.

LEONA VICARIO, 13 *de Julio, de* 1830.

Conforme al asto 24 de la ley de colonizacion de 24 de Marzo, de 1825, otorgo en venta al suplicante los once sitios q. solicita en sos terminos valdios del estado en el parage que mas le acomode, des pues de demarcados por el comisionado del sup'mo gob'no g'ral los suficientes pa. pago de la que el estato adenda a la federacion. El alc'e constitucional de la municipalidad a q. pertenesca el espresado terreno lo metera en posesion de dechos sitios y ecspidira el correspond'te titulo calificando proviam'te la calidad de ellos pa. el senalamt'o de lo q. debe satisfacer al estado pa. cuyo pago le concedo los plazos q. designa el art'o 22, de la referida ley. Dese p'r la s'ria al interesado copia de su peticion y este proicedo pa. que ocuinendo con ella al comisionado surta los efectos que son consiguientes.

VIESCA.

SANTIAGO DEL VALLE, *S'rio.*

Es copia de su original q. ecsiste en al archivo, de la tria, de mi cargo, de donde se mando sacar pr. disposicion del ecs'mo s'or gob'or.

Leona Vicario, 14 de Julio, de 1830.

SANTIAGO DEL VALLE, *S'rio.*

En la villa de San Felipe de Austin, a los diez y ocho dias del mes de Octubre del año de mil ochocientos treinta y tres; yo el ciudadano Luke Lesassieur, alcalde constitucional de esta villa y su municipalidad. En uso de los facultades que me tiene conferidas el supremo gobierno de este estado por decreto fecho en la ciudad de Leona Vicario el dia trece de Julio de mil ochocientos treinta, y en atencion a la vanta otorgada por el dicho supremo gobierno a favor del ciudadano Miguel Davila natural y vecino de la d'ha Leona Vicario de once sitios de tierra como consta del superior decreto de venta fecho en la citada ciudad el referido trice de Julio de mil ochocientos treinta presentato por su apodedado el ciudadano sentato á fojas ties y vuelta de este espediente; y en

atencion á la superior orden del ex'mo señor vice gobernador en fecha 29 del mes de Enero del presente año circulado por el señor gefe de este departamento en 19 del po. po. Febrero declarando quedar sin efecto las providencias dictados por el supremo gobierno de estado sobre que los ciudadanos á quienes se los han concedido terrenos no pudician tomar posesion de ellos hasta verificado el señal amiento que debria de haberse hecho el señor comisionado general de la nacion; y no pertenecen los once sitios demurciados por el interesado á ninguno de los puntos conferidos a la federacion por la citata orden; y en vista de la aprobacion otorgada por los Señores Empresarios Austin y Williams sentada á la vuelta de la primera foja de este espediente por corresponder los terrenos á la empresa de dichos Empresarios: De conformidad con la ley de colonizacion de estrado de veinte y cuatro de Marzo de mil ochocientos veinte y cinco, y en nombre de estado, confiero y meto en possesion real, actual y virtual al espresado apo derado del ciudadano Miguel Davila de once sitios de tiena los mismos que pidio y que se le vendió el gobierno sobre el rio San Andres cuya situacion, linderos, limites y mojones estan demarcados en la nota de medidas puesta por el agrimensor scientifico y principal ciudadano Francis W. Johnson en fojas dos q. vuelta de este espediente con la configuracion que demuestra el mapa agregado. Los espresados sitios que por d'ha nota de medidas pare cual agrimensors su de temporal en dos sitios y de agostadero en nueve sitios, yo el referido alcalde y comisionado en uso de la facultad que meda la ley lo declaro y clasifico con arreglo á lo que debe satisfacer al estado la cantidad de un mil dos cientos pesos segun le dispuesto en el articulo veinte y cuatro de la referida ley de colonizacion de fecha 24 de Marzo, de 1825, y en los plazos que designa el articulo veinte y dos de la mismo bajo las venas que ella establisca; quedando avertido de que dentro de un año debe constiene mojoneras permanentes en cada angulo del terreno, que debe cultivarlo de conformidad con lo determinado en la referida ley, que cumplica escrupulosamente con todo lo que en ella y otras se ordena. Portanto usando de las facultades que me son concididos por el citado decreto del supremo gobierno del estrado y demas disposiciones del mismo gobierno en la materia por la ley i instrucciones que me rijen, espido el presente instrumento y mando que se sague testimonio de el, y se entregue al interesado para que posca use y dispute el terreno que se le ha vendido él, sus hijos herederos y succesores ó quien de él ó de ellos causa hubiere accion ó derecho representare por su asi la voluntad del estado. Es dado en la d'ha villa de San Felipe de Austin f'ha ut supra que firmo contestigos de asistencia conforme á la ley.

L. LESASSIER.

De asis'a:
De asis'a: C. C. GIVENS.

GEN'L LAND OFFICE,
Houston, Aug. 31st, 1838.

I hereby certify that the foregoing is a true copy of the original on file in this office.

In testimony whereof I have caused the seal of the gen'l land [SEAL.] office to be hereunto affixed the date above written.

JOHN P. BORDEN,
Com. G. L. Office.

Receipt.

REPUBLIC OF TEXAS,
Milam Co., Oct. 7th, 1838.

Received on the within the sum of eight hundred dollars for first and second instalments on the within grant, fav'r Miguel Davila.

A. B. SLEURY,
Receiver Milam County.

(Duplicate.)

There is also attached to said Spanish copy of title the following certificate and receipt:

Asa Hoxey to Republic of Texas, Dr.

To government dues on 2 leagues temporal land, at $1 50	$300 00
" " 9 leagues. Pasture land, at $1	900 00
	$1,200 00
By am't received Oct. 27th, 1838	800 00
	$400 00

Certificate as to Gov't Fees.

I certify the foregoing to be the amount of government fees now due on 11 leagues of land granted to Miguel Davila, by att'y, Oct. 18th, 1833, situated on the south side of the San Andros, Milam county.

JOHN P. BORDEN,
Com. G. L. Office.

Gen'l Land Office, Austin, Sept. 30th, 1839.

Receipt.

TREASURY DEPARTMENT, *Austin, Sept. 30th*, 1839.

Received of Asa Hoxey four hundred dollars in promissory notes of the government, it being the whole amount of gov't dues on the above described land.

JAS. H. STARR,
Secretary of the Treasury.

Translation of Davila's Title.

The translation of the foregoing title is endorsed, "Translation of the title of Miguel Davila for 11 sitios of land of the San Andros river," is under the great seal of the General Land Office, and is in words, to wit:

Third seal—4 bits. Qualified by the State of Coahuila and Texas, for the years 1832 and 1833.

LESASSIER.

The party interested has paid into this receiving office of my charge 4 bits, the value of the foregoing seal. Village of Austin, 2d of October, 1833.

SAMUEL M. WILLIAMS.

Mr. Alcalde of the Village of Austin:

Attorney of Miguel Davilla, a native of the city of Leona Vicario, in the most proper form of right, and under the useful and necessary assurances, before you present myself, saying:

That my constituents obtained a right, according to the 24th article of the law of colonization of the State of the 24th of March, 1825, to eleven sitios of land granted to him in sale by the supreme government of the State, on the 13th day of July, 1830, as appears by the original document, issued by the secretary of the same supreme government, which accompanies, and in the name of my constituent, request of you, through justice, to be pleased to order that personal possession be given me of eleven sitios of land upon the San Andres river, on its southern or right margin, and at the point where the creeks called "Buffalo creek" and Donaho's creek" entering said river on the aforesaid margin, which land is within the limits of the colony of Mess. Austin and Williams, they giving their approbation, praying you also to be pleased to order the performance of all diligence that may be conducive to the interests of my constituent, with the understanding that I offer to settle them in conformity to the provisions of the law, and to comply with the remaining obligations of the same.

Therefore I pray that you may be pleased to attend to my petition, in which I shall receive grace.

Village of Austin, 2d of October, 1833.

VILLAGE OF SAN FELIPE OF AUSTIN,
3*d of October*, 1833.

By being presented and admitted, as he may be, he will pass to the Messrs. Empresarios, Austin and Williams, that they may manifest their approbation to this petition; and should it meet their approbation, the scientific and principal surveyor, citizen Francis W. Johnson, will proceed to make the survey of the eleven sitios designated by the attorney of Miguel Davila, that in view of

them and the classification which he is bound to make according to law, that all the corresponding titles may be extended to him, attaching the original document of the government which has been referred to; thus I order and sign.

LESSASSIER.

VILLAGE OF SAN FELIPE OF AUSTIN,
On the 2d of October, 1833.

According to the ninth article of the contract, which we have celebrated, with the supreme government of the State of Coahuila and Texas, and the provisions of the additional article of the instructions of commissioners, dated the 25th of April, of 1830, we give our consent and approbation to put in possession the attorney of Miguel Davila of the eleven sitios of land which he solicits, as he has designated them, which lands are vacant.

SAMUEL M. WILLIAMS.
For himself and as the Attorney of his Partner.

Mr. Alcalde and Commissioner:

The eleven sitios of land which I have surveyed for the attorney of the citizen Miguel Davila are situated upon the right margin (at southern) of the San Andes river, at the point where the creeks "Buffalo creek and Donaho's creeks" enter said river, whose limits, lines, and landmarks are in the following form: commencing the survey at a stake set upon the margin of a bank or ravine, from which 4 varas to the north 59° west there is a white oak, 18 inches in diameter; run a line to the south 20° to the east, 19,600 varas, crossing the creeks called "Clay's creek and Alligator creek," as represented on the plan, to the northeast corner of a tract of six sitios, surveyed for Pedro Zarza, which is a stake, from which 382 varas to the south, 20° to the west, there is a musquite 8 inches in diameter; from this point to the north, 70° to the west, ran another line 13,750 varas, and following the northern line of the said tract of Zarza, to the northwest corner of the same tract, which is a stake in a mound of earth in the prairie; from this point run another line to the north, 20° to the west, 20,350 varas to the said river, to a stake, from which 5 varas to the south 53° to the west, there is a hackberry, and 11 varas to the north, there is a pecan; thence following the meanders of said river, down to the place of beginning, and comprehends a plane area of 275,000,000 of square varas, or that which is equal, eleven sitios of land, and is composed, to the best of my understanding and belief, of two sitios of the temporal class, and nine sitios of the pasture class, and their configuration is that given on the accompanying plan.

F. W. JOHNSON.

Third Seal—Two bits.

For the term of 1830 and 1831.

MOST EXCELLENT SIR: The citizen Miguel Davila, a native and resident of the city of Leona Vicario, capital of the department of Coahuila and Texas, with the due respect, would represent to your excellency that, desiring lands for agriculture and stock raising, and at the same time desirous of the increase and prosperity of said State, request your excellency may deign to grant me in sale eleven sitios of land, of the vacant lands of this department, united or separated, or in the manner that may best suit me, offering, as I do offer, to settle them, and cultivate them in the manner and form provided by the law; and I pray your excellency may be pleased to concede to me, for the payment of the value of said sitios, the right expressed in the same law:

Therefore I ask and pray your excellency may be pleased to accede to this, my petition, in which I shall receive grace.

Leona Vicario, 10th of July, 1830.

Citizen MIGUEL DAVILA.

LEONA VICARIO, *13th of July*, 1830.

According to the 24th article of the law of colonization of the 24th of March, 1825, I grant in sale to the petitioner the eleven sitios he solicits on the vacant lands of the State in the place that may be most convenient to him, after the designation by the commissioner of the general supreme government of a sufficient quantity for the payment of that which the State is indebted to the federation. The constitutional alcalde of the municipality to which pertain the said land, will put him in possession of said land, and issue the corresponding titles, previously classifying the quality of it, to show the amount he is bound to pay to the State, for which payment I concede to him the rights designated in the 22d article of said law. The secretary will give the party interested a copy of his petition and this decree, that he may present them to the commissioner for the consequent effects.

VIESCA.

SANTIAGO DEL VALLE, *Secretary*.

This is a copy of its original, which exists in the archives of the secretary's office, of my charge, from whence it is ordered to be taken, by order of the most excellent governor.

Leona Vicario, 14th of July, 1830.

SANTIAGO DEL VALLE,
Secretary.

Third Seal—4 bits.

Qualified by the State of Coahuila and Texas, for the years of 1832 and 1833.

The party interested has paid into this receiving office of my charge 4 bits, the value of the foregoing seal.

Village of Austin, 2d of Oct., 1833.

SAMUEL M. WILLIAMS.

In the village of San Felipe of Austin, on the 18th day of the month of October, of the year 1833, I, the citizen Luke Lessassier, constitutional alcalde of this village and its municipality, in exercise of the authority conferred on me by the supreme government of the State, by decree dated in the city of Leona Vicario, on the 13th day of July, of 1830, and in attention to the sale granted by the supreme government in favor of the citizen Miguel Davila, a native and resident of the said Leona Vicario, of eleven sitios of land, as appears by the superior decree of sale dated in the said city on the 13th of July, 1830, presented by his attorney the citizen , contained on the third leaf and the fourth page of this document, and in attention to the superior order of the most excellent well governor, dated on the 29th of the month of January, of the present year, circulated by the chief of this department on the 19th of the last passed February, declaring without effect the decrees dictated by the supreme government of the State relative to the citizens to whom lands have been conceded, that they could not take possession of them until the designation which was bound to be made by the commissioner general of the nation; and the eleven sitios designated not pertaining to any of the points conferred to the federation by said order; and in view of the approbation given by the Messrs. Empresarios, Austin and Williams, contained on the second page of the first leaf of this document, as the lands pertain to the enterprise of said Empresarios, in conformity with the law of colonization of the State, of the 24th of March, 1825, and in the name of the State, I confer and put in possession, real, actual and virtual, to the said attorney of the citizen Miguel Davila, of eleven sitios of land, the same which he asked, and were sold to him by the government, upon the San Andres river, whose situation, lines, limits and landmarks are demarked on the notes of survey made by the scientific and principal surveyor, citizen Francis W. Johnson, on two leaves, and 6th page of this document, with the configuration given on the accompanying attached map. The said sitios, by the notes of survey, the surveyor believes to pertain to the temporal class in two sitios, and to the pasture class in nine sitios. I, the said alcalde and commissioner, *I* exercise of the authority conferred on me by the law, declare and classify that which he is bound to pay the State, the amount of one thousand two hundred dollars, according to the provisions of the 24th article of the said law of colonization, dated 24th March, 1825, and on the terms designated in the 22d article of said law, under the penalties

therein established remaining ratified, that within one year he is bound to construct permanent landmarks in each angle of the land, and that he is bound to cultivate it in conformity with the provisions of said law, that he shall strictly comply with the provisions of that and other laws.

Therefore, using of the powers which have been conferred on me by the said decree of the supreme government of the State, and other decrees of the same government on the matter, by the law and instructions which govern me, I issue the present instrument, and order that a certified copy be taken of it and delivered to the party interested, that he may possess and enjoy the land which has been sold to him, *he* his children, heirs, successors, or whom of him, or of them, may have cause, right, or action to represent, for this is the will of the State.

It is given in the said village of San Filipe of Austin, on the date above, which I sign with assisting witnesses according to the law.

L. LESASSIER.

Asst'g:
Asst'g: C. C. GIVENS.

GENERAL LAND OFFICE,
State of Texas.

I, E. Sterling Robertson, translator and recorder of Spanish deeds in the general land office of said State, bonded and sworn, certify the foregoing to be a correct translation of the original document on file in this office.

Given under my hand, at the city of Austin, on the 22d day of January, A. D. 1850.

E. STERLING ROBERTSON,
Translator, &c.

GENERAL LAND OFFICE,
State of Texas.

I, George W. Smyth, commissioner of the general land office of said State, certify that E. Sterling Robertson, whose *is* name is signed above, is the translator and recorder of Spanish deeds in this office, bonded and sworn.

In testimony whereof I have hereunto set my hand, and caused the seal of said office to be affixed, at the city of Austin, on the 22d day of January, A. D. 1850.
[SEAL.]

GEORGE W. SMYTH,
Commissioner.

Fee $5 00.

The plaintiff also read the paper annexed to the said transcript, (Spanish,) being a certificate of John P. Borden, late commissioner

of the said general land office, dated the 30th of Sept., 1839, showing the amount of government fees or dues then due on the said eleven leagues of land, and the receipt of Jas. H. Starr, then secretary of the treasury of said republic, showing the payment of the same; also the disclaimer set forth in the first plea contained in each of the said amended answers of said defendants, and the certificate of W. D. Thompson, clerk of the county court of Milam county, dated the 8th of October, 1838, and endorsed on said transcript, which is as follows:

Certificate of W. D. Thompson, C'y Recorder.

REPUBLIC OF TEXAS,
County of Milam.

I, W. D. Thompson, clerk of the county court, and county recorder, in and for the county of Milam, do hereby certify that the within instrument was presented and duly recorded in my office, at Nashville, this 8th October, A. D. 1838.

W. D. THOMPSON,
Co. Recorder.

The testimony on the part of the plaintiff being closed, the said defendants, in order to maintain the issues on their part, offered to read to the jury two testimonios of title in the Spanish language, issued by William H. Steele, commissioner, one in favor of said David Mumford for one league of land, and the other in favor of said Jesse Mumford for a like amount, together with translations thereof, certified from the general land office of the State of Texas, which testimonios and translations, and the authentications thereof, are in the words and figures following, to wit:

Spanish Title—David Mumford.

The original Spanish title or testimonio to David Mumford, and authentications and certificates, in words, to wit:

Sello Segundo—Doce Reales.

Habilitado por el estado de Coahuila y Texas para el bienio de 1828, y 29, 30, 31, 32, 33, y 34 y 35.

JUAN DURST.

El C. Guillermo H. Steele, com'do nombrado por el supremo gobierno de este estado pa. el repartine'to y posesion de tierras y espudecion de titulos a los mueros cohonos en la empresa de coloniz'on de la comp'a de Nashville dos cuanto David Mumford se ha recinido como colono en la empresa de coloniz'on contrada con el gobierno del estado de Coahuila y Texas por Roberto Leftwick el dia 15 de Abril de 1825; y despuer consido du a la comp'a de Nashville en 15 de Octubre de 1827; y habiendo d'ho David Mumford justificado sea casada y encantrarse en su persona los requisitos

prevenidos por la ley de coloniz'on del estado de 24 de Marzo de 1825; de conformidad con la citada, ley y lo previrido en d'ha contrata qe. autoriza el establicim'to de fam'as dentro de los limites de la propia empresa en cuales quiera parte de los terrenos baldios qe. tiene contrados la misma compania; y de las instrucciones qe. mi rijen con f'ha 4 de Set'e de 1827; y arto. adicional con f'ha 25 de Abril, de 1830; y en nombre del estado concido, confiero y meto en posesion real y personal de un sitio de tierra al mensionado David Mumford cuyo terreno ha sido medido por los agrimensores Cummins y Graves nombrados previam'te al intento bajo la situacion y linderos siguientes comensando en al rincon N. E. del ¼ de sitio No. 1, en mia estaca de donde un palo blanco y en diametro N. 86° O. 9 vs.; y un fresno 10 en diametro S. 89° E. 4 vs. De alli S. 19° O. 4,967 vs.; al rincon S. E. del ¼ de sitio No. 1, una estaca de donde un encino 15 en diametro S. 47½° O. 16½ vs.; y un olmo 12 en diametro S. 50° E. 11 vs. De alli N. 71° O. 1,250 vs.; al rincon S. O. de d'ho ¼ de sitio un encino 12 en diametro marcado, como rincon. De alli S. 19° O. 3,180 vs.; cursó "Donaho's Creek" continuo en 4,146 vs.; y persona estaca pa. el rincon S. O. de d'ho sitio de donde un olmo 6 en diametro N. 18° O. 32 vs. De alli S. 71° E. 1,300 vs.; cursó un arroyuelo continuo en 2,236 vs.; cursó el segundo arroyuelo continuo en 2,820 vs.; y cursó el arroyuelo en 3,750 vs.; y puso una estaca pa. el rincon N. E. de d'ho sitio de donde un encino 15 en diametro S. 11° O. 16 vs.; y un olmo 8 en diametro S. 57° O. 14 vs. De alli N. 19° E. 1,620 vs.; y cursó un arroyuelo continuo en 1,720; y curso crusando "Donaho's Creek" en 6,736 vs.; y formo rincon en un palo blanco 15 en diametro marcado como un rincon. De alli con las vueltas de ris a donde comenzo; y comprehende un sitio de tierra en superficil. El espresado terreno pretenice a la clace temporal en cualtro vigesima quinta partes lo qe. sirve de calificacion para el precio qe. pro'r el deba pagar al estado segun el artic'lo 22 de d'ha ley y bajo las penas alli establecidas quidando advertido qe. dentro de un cine'e debe establican mojoneras permanentes en cada angulo del terreno y qe. debe poblarlo y cultivarlo de conformidad con lo previnido por la ley. Por tanto usando de las facultades qe. me son concididas por la propria ley é instrucciones consig'tes espido el presente instrum'te y mando qe. se sague testimonio de el y se entregue al interesado para qe. posee y dispute el terreno el sus herederos y successores ó quien de el ó de ellos causa ó año hubierse.

Es dado en la villa de Viesca, a 25 de Feb'ro, de 1835.

GUILLERMO H. STEELE.

De asst'a: MANUEL VALDES FLORES.
De asst'a: J. G. W. PIERSON.

Con cuerda con el titulo original qe. ecsiste en este archivo de

donde si Saco para la poste interesada hay dia de la f'ha en la forma prevenido por la ley.

Viesca, 25 de Feb'ro, de 1835.

GUILLERMO H. STEELE.

De ass'a: MAN. VALDES FLORES.
De ass'a: J. G. W. PIERSON.

Recorder's Certificate.

The certificate of record endorsed on the foregoing Spanish testimonio is in words, to wit:

REPUBLIC OF TEXAS,
County of Milam.

I, W. D. Thomson, clerk of the county court, and county recorder in and for the county aforesaid, do hereby certify that the within deed was presented, proven, and duly recorded in my office, at Nashville, this 21st July, 1838.

W. D. THOMSON,
Co. Recorder.

The testimonio is also endorsed in words, to wit:

$35 40.

Received of David Mumford thirty-five dollars and forty cents, it being government dues on the within deed, this the 16th Sept., 1841.

H. B. KING,
Receiver of Public Dues.

Spanish Title to Jesse Mumford.

The testimonio or grant to Jesse Mumford in the Spanish language is in words, to wit:

Sello Segundo—Doce Reales.

Habilitado por el estado de Coahuila y Texas para el bienio de 1828 y 29, 30, 31, 32, 33, y 34, y 35.

JUAN DURST.

El C. Guillermo H. Steele, com'de nombrado por el supremo gobierno de este estado p'a el repartine'to y posesion de tierras y espedicion de titulos á los hueros colonas en la empresa de coloniz'on de la compania de Nashville por cuanto Jesse Mumford se ha recivido como colona en la empresa de coloniz'on contratada con el gobierno del estado de Coahuila y Texas por Roberto Leftwick el dia 15 de Abril de 1825, y despues concedida á la compania de Nashville al dia 15 de Octubre de 1827, y habiendo d'ho Jesse Mumford justificado su casado y en controsa en su persona los requisitos prevenidos por la ley de coloniz'on del estado de 24 de Marzo de 1825; de conformidad con la citada ley y prevenido en d'ho contrata q'e autarisa el establecimiento de familias dentro de los limites de la propio empresa en cuales quiera parte de los terminos baldios q'e tiene contratados la misma comp'a y de las instrucciones q'e

me rejen con f'ha 4 de Set'e de 1827, y art'o adicional con f'ha 25 de Abril de 1830, y en nombro del estado concedo confiero y meto en possesion real y personal de un sitio de tierra al mencionada Jesse Mumford. Cuyo terreno ha sido medido por el agramensor Moses Cummins nombrado previamento al intento bajo la situacion y luideros siguientes.

Comensando en la margen S. del d'ho San Andres en un nogal 6 en diametro marcado coma un rincon de donde un arbol 30 en diametro N. 79° E. 6 vs., y un palo blanco 30 en diametro S. 86° O. 4½ vs. De alli S. 19° O. 7,580 vs., y curso "Donaho's creek" en 10,840 vs., pueso una estaca para el rincon S. E. de d'ho sitio de donde un olmo 6 en diametro S. 84° E. 38 vs., y otro olmo 6 en diametro S. 54° E. 39 vs. De alli N. 72° O. 2,500 vs., á donde incontro con el sitio No. 1. De alli N. 19° E. en 2,917 vs., curso "Donaho's creek" continuo y curso un arroyouelo en 6,784 vs., continuo y curso "Dars' creek" en 8,884 vs., haciendo la entera distancia 10,091 vs., puso una estaca para el rincon N. E. del sitio No. 1 de donde un palo blanco 8 in diametro S. 14° E. 2 vs., y un fresno 15 en diametro N. 84° O. 5 varas. De alli con las vueltas del rio a donde comenzo, y comprehende un sitio de tierra en superfice, el espresado terreno pertenece a la clace temporal en cuatro vigesima quinta partes los q'e siebe de calificacion para el precio q'e p'a el debe pagar al estada segun el art'o 22 de d'ho ley y bajo las penas alli establicidos; que dando advertedo que dentro de un ano'e debe establicer mojoneras permanentes en cada angulo del terreno y q'e debe poblarlo y cultivarlo de conformidad con le prevenido por la ley.

Por tanto usando de las facultades que me doce concedidas por la propia ley instrucciones consiguientes espido el presente instrumento y mando que se sague testimonio de el y se entregue al interesado para que pesui y difrute el terreno el sus herederos y succesores o quien de el o de ellos causa o d'ro hiebiere. El dado en la villa de Viesca, a 25 de Feb'o, de 1835.

GUILLERMO H. STEELE.

De ass'a: MAN'L VALDES FLORES.
De ass'a: J. G. W. PIERSON.

Concuerdo con el titulo original qe. ersiste de este archivo de donde se saco para la parte interesada hay dia de la f'ha en la forma prevenida por la ley.

Es dado en la villa de Viesca, a 25 de Feb'o, de 1835.

GUILLERMO H. STEELE.

De ass'a: MAN'L VALDES FLORES.
De ass'a: J. G. W. PIERSON.

Recorder's Certificate.

Endorsed on the Spanish testimonio to Jesse Mumford appears the following certificate in words, to wit:

REPUBLIC OF TEXAS,
County of Milam.

I, W. D. Thomson, clerk of the county court, and county recorder in and for the county aforesaid, do hereby certify that the within deed was proven for record of J. B. Chance, who made oath that he was familiar with the handwriting of the commissioner, William H. Steele, also of the assisting witnesses to the same, and that he believed their different signatures to be genuine, and the same duly recorded in my office at Nashville, this 4th October, 1838.

W. D. THOMSON,
County Recorder.

There *was* also filed with the aforesaid testimonios in Spanish, other papers purporting to be translations of the aforesaid Spanish titles, which are in words, to wit:

Translation of Title—David Mumford.

The translation of the testimonio or title of David Mumford, as follows:

Third Seal—4 Reals.

Legalized by the State of Coahuila and Texas for the years 1834 and 1835.

SMITH.

Paid by the interested, into this receiving office in my charge, 4 reals, the value of the foregoing seal.

SAMUEL M. WILLIAMS.

The citizen William H. Steele, appointed commissioner by the supreme government of this State for the distribution and giving possession of lands, and for issuing titles to the new colonists in the colonization enterprise of the Nashville company: Whereas David Mumford has been received as colonist in the colonization enterprise contracted with the government of the State of Coahuila and Texas by Robert Leftwick on the 15th of April, 1825, and afterwards granted to the Nashville company, on the 15th October, 1827, and the said David Mumford having proven that he is married, and being found to possess the requisites prescribed by the colonization law of the State of the 24th March, 1825, in conformity with said law and the provision in said contract which authorizes the settlement of families within the limits of the proper enterprise on any part of the vacant lands for which the same company have contracted, with the instructions which govern me, dated 4th Sept., 1827, and the additional article dated April 25, 1830, and in the name of the State, I grant, confer, and put in possession, real and personal, of one league of land, the aforesaid David Mumford, which

land has been surveyed by the surveyors, Cummins and Graves, previously appointed for that purpose, according to the situation and boundaries following:

Commencing at the N. E. corner of the quarter league No. 1, at a stake, from which a hackberry 7 in. dia. bears N. 86° W. at 9 varas, and an ash 10 in. dia. bears S. 89° east at 4 varas; thence south 19° west 4,967 varas to the southeast corner of the quarter league No. 1, a stake, from which an oak 15 in. dia. bears S. 47½° W. 16½ varas, and an elm 12 in. dia. bears south 50° east at eleven varas; thence N. 71° W. 1,250 varas to the southwest corner of said quarter league, an oak 12 in dia., marked as corner; thence S. 19° W. 3,180 varas crossed Donaho's creek; continued at 4,146 varas, and set a stake for the S. W. corner of said league, from which an elm 6 in. dia. bears N. 18° west at 32 varas; thence south 71° east 1,300 varas crossed a small creek; continued at 2,236 varas, crossed the second small creek, continued at 2,820 varas, and crossed the creek at 3,750 varas, placed a stake for the N. E. corner of said league, from which an oak 15 in. dia. bears S. 11° west 16 varas, and an elm 8 in. dia. bears S. 57° W. 14 varas; thence north 19° east 1,620 varas, and crossed a small creek; continued at 1,720 varas, crossed Donaho's creek 6,736 varas, and made the corner on a hackberry 15 in. dia., marked as corner; thence with the meanders of the river to the beginning, comprising one league of land in superficies. The aforesaid land pertains to the temporal class in 4-25ths, which serves as classification for the price he should pay for it to the State, according to article 22 of said law, and under the penalties therein established, remaining notified that within one year he should establish permanent landmarks in each angle of the land, and that he should settle it and cultivate it in conformity with what is provided by the law. Therefore, using the powers vested in me by the law, and consequent instructions, I issue the present instrument, and I order that a testimonio of it be taken, and be delivered to the party interested, that he may possess and enjoy the land, he, his children, heirs and successors, or whoever of him or of them cause or rights may derive.

Given at the town of Viesca on the 20th March, 1835.

GUILLERMO H. STEELE.

Assisting witness: FELIPE WEPPLER.

Assisting witness: MANUEL VALDEZ FLORES.

Translation of Title to Jesse Mumford.

The paper filed in this cause purporting to be a translation of the title to Jesse Mumford is in words, to wit:

Third Seal—4 Reals.

Legalized by the State of Coahuila and Texas for the years of 1834 and 1835.

SMITH.

Paid by the party interested in this receiver's office, in my charge, 4 reals, the value of the foregoing seal.

SAMUEL M. WILLIAMS.

The citizen William H. Steele, appointed commissioner by the supreme government of this State for the distribution and giving possession of lands, and for issuing titles to the new colonists in the colonization enterprise of the Nashville Company: Whereas Jesse Mumford has been received as colonist in the colonization enterprise contracted with the government of the State of Coahuila and Texas by Robert Leftwick on the 15th day of April, 1825, and afterwards granted to the Nashville Company on the 15th October, 1827; and the said Jesse Mumford having proven that he is married, and he being found to possess the requisites prescribed by the colonization law of the State, of the 24th March, 1825, in conformity with the said law, and the provision in said contract which authorizes the settlement of families within the limits of the proper enterprise, or any part of the vacant lands for which the same company has contracted, and with the instructions which govern me, dated the 4th Sept., 1827, and with the additional article dated April 25th, 1830, and in the name of the State, I grant, confer, and put in possession, real and personal, of one league of land, the aforesaid Jesse Mumford, which land has been surveyed by the surveyor, Moses Cummins, previously appointed for that purpose, according to the situation and boundaries following: commencing on the south margin of said San Andres, at a pecan 6 in. dia., marked as corner, from which a tree (arbol) 30 in. dia. bears N. 79° E. at 6 varas, and a hackberry 30 in. dia. bears S. 86° W. at 4½ varas; thence south 19° west 7,580 varas, and crossed Donaho's creek at 1,084 varas, set a stake for the S. E. corner of said league, from which an elm 6 in. dia. bears S. 84° east, at 38 varas, and another elm 6 in. dia. bears south 54° E. at 39 varas; thence north 71° west 2,500 varas to league No. 1; thence north 19° east, at 2,917 varas crossed Donaho's creek; continued and crossed a small creek at 6,784 varas; continued and crossed "Dars' creek" at 8,884 varas, making the whole distance 10,091 varas, and placed a stake for the northeast corner of league No. 1, from which a hackberry 8 in. dia. bears S. 14° E. 2 varas, and an ash 15 in. dia. bears N. 84° W. 5 varas; thence with the meanders of the river to the commencement, comprising one league of land in superficies; 4-25ths of said land pertains to the temporal class of land, which serves as classification for the price he should pay for it to the State, according to article 22 of *of* said law, under

the penalties therein established, being notified that within one year he should establish permanent landmarks in each angle of the land, and that he should settle it and cultivate in conformity with what is provided by the law.

Therefore, using the powers vested in me by the proper law, and consequent instructions, I issue the present instrument, and I order that a testimonio of it be taken and delivered to the party interested, that he may possess and enjoy the land, he, his heirs, and successors, or who of him or of them cause or right shall derive.

Given in the town of Viesca, on the 25th day of February, 1835.

GUILLERMO H. STEELE.

Assisting witness: MAN'L VALDEZ FLORES.
Assisting witness: J. G. W. PIERSON.

GEN'L LAND OFFICE, CITY OF AUSTIN,
December 3*d*, 1855.

I, John Buchanan, translator and recorder of Spanish deeds in said office, bonded and sworn, certify the foregoing to be correct translations of the original titles on file in said office.

JOHN BUCHANAN, *Translator*.

GEN'L LAND OFFICE,
State of Texas.

I, Stephen Crosby, commissioner of the General Land Office of said State, certify that John Buchanan is translator and recorder of Spanish deeds in said office, bonded and sworn, and that the foregoing are correct translations of the original titles on file in said office.

In testimony whereof I have hereto set my hand and caused the seal of said office to be affixed at the city of Austin, this [SEAL.] 3d December, 1855, *affixed at the city of Austin, this* 3*d December*, 1855.

S. CROSBY, *Com'r*.

These instruments were permitted to go the jury for what they were worth, as evidence of title, without objection on the part of the plaintiff. But it was objected by the plaintiff that the certificates endorsed on the respective testimonios by W. D. Thomson, recorder, were not sufficient evidence to entitle the said testimonios to be read or received as duly registered or recorded instruments or deeds under the laws of Texas, (the signature of said recorder, and the fact that he was such recorder, being admitted by plaintiff,) which objection was overruled by the judge, who permitted the said testimonios to go to the jury as deeds duly registered and recorded, to which opinion, overruling and permission of the judge the plaintiff then and there excepted.

Interrogatories, Cross-inter's, Agreement and Commission.

The defendants then offered to read in evidence to the jury the deposition of Jesse Bryant, taken by John A. Houston, chief justice of the county court of Bell county, upon interrogatories and cross-interrogatories, pursuant to the State practice of Texas, in alleged pursuance of the following agreement signed by Ebenezer Allen, att'y for the pl'ff, and commission issued by W. P. De Normandie, clerk; which interrogatories, cross-interrogatories, agreement and commission, with the authentications thereof, are in the words and figures following, to wit:

The commission as follows:

THE UNITED STATES OF AMERICA,
District of Texas.

To the Chief Justice, Notary Public or Clerk of the District Court for the county of Bell, in the district of Texas, greeting:

Know ye, that, reposing especial trust and confidence in your integrity and fidelity, have, and by these presents do nominate, constitute, appoint, commission and require you to cause Jesse Bryant to come before you at such time and place as you may appoint, and that you then and there carefully and fully examine him upon his oath, first to be taken before you, touching the annexed interrogatories and cross-interrogatories.

That you reduce his answers so taken to writing, in proper form, and cause the same to be subscribed and sworn to before you by said witness. That you certify under your hand and seal of office, that said answers were sworn to and subscribed before you.

That you seal up in an envelope the answers so taken, together with the annexed interrogatories and cross-interrogatories, and this commission, with your name written across the seal thereof. That you endorse on said envelope the names of the parties to said suit, as well the name of said witness.

That you direct the package to the "Clerk of the district court of the United States, at Austin, Texas." That if said package is transmitted by the public mail, the postmaster shall endorse thereon that he received it from your hands, and sign his name thereto. Which answers, when so taken and returned as aforesaid, are to be used in evidence in a certain suit now pending in said United States district court at Austin, wherein Miguel Davila is plaintiff, and David Mumford and others are defendants.

Herein fail not, but due return make of this commission, with your proceedings had by virtue thereof, to our said United States district court for the district of Texas, on or before the first day of the next term thereof, to be begun and holden at the court-house thereof, in the city of Austin, on the third Monday of November, A. D. 1857.

Witness the Honorable John C. Watrous, judge of the district court of the United States for the district of Texas, at Austin, and seal of said court, at the city of Austin, [SEAL.] this 5th day of December, A. D. 1856, and of the independence of the United States of America the 81st year.

W. P. DE NORMANDIE,
Clerk.

The interrogatories are in words, to wit:

In the U. S. District Court, at Austin.

MIGUEL DAVILA
vs.
DAVID MUMFORD et al. } No. 104.

Interrogatories to Jesse Bryant on the part of the defendants, David Mumford and Jesse Mumford, in the above suit; said witnesses residing in Bell county.

1st. Are you or not acquainted with the defendants in this suit, David and Jesse Mumford, and how long have you been acquainted with them, or either of them?

2d. Are you or not acquainted with the locality of the colonist head-right grants made to said David and Jesse Mumford; if so, where are the same situated?

3d. Is or is not the said David Mumford in possession of his said grant of land; if so, when did he first go into possession, and how long has said possession continued—whether from the time he first took possession continuously—or has the possession been at any time interrupted, and when and for what time?

4th. If you state any possession by said defendant, please state what you mean by such possession. State fully all acts and circumstances showing such possession during the time you have mentioned; in whose right was said possession taken and held, what has been the claim under which said defendant has held, and which has been made during his possession; whether in his own right or that of another.

5th. Has the plaintiff in this case, or any one for him, or any other person, except said defendant, or those under him, held any possession of said land?

6th. You will please answer the same questions with respect to possession by the defendant, Jesse Mumford, which are propounded in the 3d, 4th, and 5th interrogatories respecting the David Mumford league.

7th. State all other facts in your knowledge which will be of advantage to any party in this suit.

SHELLY BALLINGER,
BROWNRIGG & LAWRENCE.

The agreement of plaintiff's attorney is as follows:

I agree that a commission may issue under the State practice to take the answers to the foregoing interrogatories, and following cross-interrogatories, and the same shall be evidence so far as the facts proved are competent and material.

EBEN. ALLEN.

The cross-interrogatories are in words as follows:

1st. If, in answer to the 2d direct interrogatory, you say you are acquainted with the "locality" therein named, then how long have you been so acquainted, and what do you mean by such "locality;" how did you become acquainted with it, at whose request, and how often have you visited it?

2d. Are you interested in the result of this suit, or in the determination of any point, question, or fact involved in or to be settled by it? Are your claims to land, or any of them, affected by the plaintiff's title, or any and what like title?

3d. If, in answer to any of the direct interrogatories, you say that David Mumford was in possession of any grant or tract of land, please state what you mean by "possession;" how did he get possession, and when; how has he held it; how much land has he got enclosed by a fence; how long has he had the same enclosed?

4th. If any besides the said Mumford have been in possession of, or living upon, any portion of the land to which he sets up claim, please state their names, how long, and under whom he or they remained, or if still in possession.

5th. If you state that any have held under David Mumford, how do you know this; whence came your information; from whom?

E. ALLEN,
For ALLEN & HALL.

The certificate of the clerk to the foregoing copies of interrogatories, cross-interrogatories, and commission is as follows:

THE UNITED STATES OF AMERICA,
District of Texas.

I, William P. De Normandie, clerk of the district court of the United States for the district of Texas, at Austin, hereby certify that the above and foregoing is a true and correct copy of the original interrogatories, and cross-interrogatories, now on file in said court.

In witness whereof I have hereto set my hand, and affixed the [SEAL.] seal of said court, at the city of Austin, this 4th day of December, 1856.

W. P. DE NORMANDIE,
Clerk.

Deposition of Jesse Bryant.

The envelope enclosing the commission, copies of interrogatories, cross-interrogatories, agreement, and the deposition of the aforesaid Jesse Bryant, is endorsed, to wit:

Miguel Davila vs. David Mumford et al.

Deposition of Jesse Bryant, witness in said cause.

To the clerk of the U. *N.* States district court, Austin city, Texas. (P. M.)

Received this package from J. N. Houston, for mailing, this May 23d, 1857.—W. D. Eastland, P. M.

And on the reverse of the envelope, endorsed:

Received by the hand of the postmaster at Austin, and filed this 25th day of May, A. D. 1857.—Matthew Hopkins, clerk.

Also endorsed across the seal: John N. Houston, chief justice of Bell co.

And endorsed: Opened at the request of def't Mumford's attorneys, June 1st, 1857.—M. Hopkins, clerk.

Enclosed in the aforesaid envelope, with the commission, interrogatories, cross-interrogatories, and agreement, were the depositions of the aforesaid Jesse Bryant, endorsed:

Answers of Jesse Bryant to interrogatories filed in case of Miguel Davila vs. David Mumford et al.

And in words, to wit:

MIGUEL DAVILA
vs.
DAVID MUMFORD et al.

Answers of Jesse Bryant to interrogatories in the above entitled cause:

Answer to inter. 1st. I am acquainted with David and Jesse Mumford, and have been acquainted with them since the fall of 1837.

Answer to inter. 2d. I am acquainted with the locality of the head-right grants made to David and Jesse Mumford; they are situated on the south side of Little river, in Milam and Bell co's.

Answer to inter. 3d. David Mumford is in possession of his said grant; he went into possession in the spring of 1844. David Mumford hired me to work with him at that time on said place, and he has had possession ever since. He did leave soon after he done the first work for his stock and family, and left myself and his negroes in possession until he returned with his family. He, David Mumford, also came back and forwards himself before moving his family. I cannot say how long it was when he first left until he brought his family to live there.

Answer to inter. 4th. I mean by possession living on it, cultivating it, and when absent himself leaving others under him to keep and cultivate his premises; he possessed and claimed said

land in his own right. He has held under head-right or title from Robertson, or as colonist in Robertson's colony, and has held in his own right.

Answer to inter. 5th. The plaintiff, nor any other person, has ever held possession of said land, except the defendant and those who held under him.

Answer to inter. 6th and inter. 3d. Jesse Mumford is in possession of his grant of land by a tenant; he was in possession in 1850 to my knowledge; he may or may not have been in possession sooner; his possession has continued ever since. It was taken possession of and held in his own right; his possession has been continuous, and has never been interrupted to my knowledge.

Answer to inter. 4th, (contained in inter. 6th.) I mean by possession that Jesse Mumford has a tenant on said land, cultivating, using, and building upon the same for him; he has been in, *in* has had constant possession, using and cultivating it; he has held the said land by virtue of his own head-right certificate as colonist in Robertson's colony in his own right.

Answer to inter. 5th, as referred to in inter. 6th. The plaintiff, nor any other person, has ever held possession of said land of Jesse Mumford that I know of.

Answer to inter. 7th. I know nothing more about said lands more than I have stated.

JESSE BRYANT.

The above answers to sworn to and subscribed before me the 15th May, 1857.

In testimony whereof I hereto set my hand and seal of office, at [SEAL.] Belton, this 23d May, A. D. 1857.

JOHN N. HOUSTON,
Chief Justice C. C. of Bell Co.

Answers to Cross-interrogatories.

Answer to cross-inter. 1st. I have been acquainted with the locality of David Mumford's land since 1844, and with Jesse Mumford's the same length of time. I mean by locality the situation of said land or the place where it lies. I know the locality of David Mumford's and Jesse Mumford's, as being above and adjoining David Mumford's league, both fronting on Little river; the lands of both were shown to me by David Mumford. I have visited said land innumerable times.

Answer to inter. 2d. I am not interested in the result of this suit, nor in any point, question or fact, involved in or to be settled by it; none of my claims to land are affected by plaintiff's title. I do live on lands claimed by an eleven-league grant, but bought the land and obtained a warrantee title for the same, who is responsible.

Answer to cross-inter. 3d. I have answered the first part of this

interrogatory by direct interrogatories 3d and 4th; he got possession by locating upon it; I do not know when he located upon it; he has held by head-right certificate; I should say he had enclosed by fence between seventy-five and one hundred acres. I cannot say how long he has had the same enclosed; he has been enclosing some ever since he has been on the land.

Answer to cross-inter. 4th. A. G. Adams and James Taylor have and are now living on a portion of the David Mumford leagues; they both claim under David Mumford. A. G. Adams has lived on the land about one year or eighteen months, and James Taylor only a few months.

Answer to cross-inter. 5th. A. G. Adams told me he claimed under David Mumford. I have never heard James Taylor say he claimed under Mumford; it is only by hearsay that I know.

JESSE BRYANT.

Sworn to and subscribed before me, on the 15th May, A. D. 1856.

In testimony whereof I hereto set my hand and seal of office, at Belton, Bell Co., Texas, this 23d of May, A. D. 1857.

JOHN N. HOUSTON,
Chief Justice C. C. Bell Co.

STATE OF TEXAS,
County of Bell.

I, John N. Houston, chief justice of the county court of Bell county, hereby certify that Jesse Bryant appeared before me on the 15th of May, A. D. 1857, and made the foregoing answers to the interrogatories and cross-interrogatories sent to me by the clerk of the N. U. S. district court, and filed in the case of Miguel Davila vs. David Mumford et al., being duly sworn according to law, and subscribed his name to the same in my presence.

In testimony whereof I hereto set my hand and seal of office, this the 23d of May, A. D. 1857.

[SEAL.]

JOHN N. HOUSTON,
Chief Justice of C. C. of Bell Co.

To the reading of which deposition as evidence to the jury the plaintiff objected, because the same was not taken by or before an officer authorized to administer an oath or to take depositions by the laws of the United States.

And the plaintiff further objected to all such parts of said deposition as purport to show that said defendants, or either of them, were in possession of the land they claim in their said amended answers by tenant or tenants, on the ground that the same was not the best evidence; and, further, that the same was not competent evidence to prove the possession or occupation of said def'dts,

or either of them, by tenant or tenants. All which objections were overruled by the judge, and the said deposition was permitted to be read to the jury; to which opinion of the judge in overruling the said objections and each one of them, and in permitting the said deposition to be read in evidence to the jury, the plaintiff then and there excepted.

Deposition de bene esse of Benjamen Bryant.

The defendants then offered to read in evidence to the jury the deposition of Benjamen Bryant, purporting to be taken de bene esse; which deposition, certificate of caption by the commissioner, and interrogatories appertaining thereto, are in the words and figures following, to wit:

THE UNITED STATES OF AMERICA, DISTRICT OF TEXAS,
State of Texas, County of Milam.

Be it remembered, that on this first day of April, in the year of our Lord one thousand eight hundred and fifty-six, I, James Jeffries, a commissioner duly appointed by the district court of the said United States for the district of Texas aforesaid, under and by virtue of the act of the Congress of the said United States, entitled "An act for the more convenient taking of bail and affidavits in civil causes, depending in the courts of the United States," passed February 20th, 1812, and the act of the said Congress, entitled "An act in addition to an act entitled 'An act for the more convenient taking of bail and affidavits in civil causes depending in the courts of the United States,' passed March 1st, 1817," and the act of said Congress entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did, at the request of the defendant in this suit hereinafter named, call and cause to be and personally appear before me, in the town of Cameron, in the said district and State, Benjamen Bryant, to testify and the truth to say, on the part of the defendants, in a certain cause or suit now depending and undetermined in the district court of the United States for the district of Texas, at the city of Austin, in the said State of Texas, wherein Miguel Davila is plaintiff, and David Mumford, D. J. Graham, Peter Server, Lewis Taylor, Beverly Pool, Hugh McKean, Pierson Carlise and J. J. Bangs, defendants.

And the said Benjamen *Benjamen* Bryant being of sound mind and lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause or suit aforesaid, was carefully examined by me, and he did thereupon depose, testify, and say as follows, that is to say:

Answer to int. 1st. I do not know the plaintiff. I am acquainted with David Mumford and Jesse Mumford and A. W. Sillivan.

Answer to int. 2d. I know the land claimed by David Mumford and Jesse Mumford. I do not know the land claimed by Sillivan that I know of in this suit. I am on Little river, in Milam, running from said river across "Donaho's creek." David Mumford occupies his head-right himself, Jesse Mumford has an occupant on his head-right by the name of Lewis Taylor. David Mumford commenced improving his league above named in the summer of 1844—I think in the month of August; he moved his family to said place in Dec., 1846, but he was improving the place from 1844 up to the time he moved there; he has, I think, over one hundred acres under fence, and most of it in cultivation; he has plenty of buildings, and they are more comfortable than most persons have in Texas.

Answer to int. 3d. I think in Oct., 1850, and commenced improving of said land. Lewis Taylor; he has been there ever since fall, 1850.

Ans. to int. 4th. I am not.

Ans. to int. 5th. I do not know certainly.

Ans. to int. 6th. David Mumford, as before stated, is living on his league of land; on the 12th day of F'by David Mumford was living on said land, and had been with his family from 1846, and Jesse Mumford league. Lewis Taylor was living on Jesse Mumford's league of land above spoken of, and was on the same on the 12th day of Feb'y, 1855, and is yet and has been ever since Oct., 1850.

Answer to int. 7th. I believe that I have now related all that I now recollect, of any interest to them; and further this deponent saith not.

B. BRYANT.

And I, James Jeffries, the commissioner aforesaid, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, that the testimony of the said witness is material and necessary in the civil cause or suit, in the caption of the said deposition named; and that he lives in Milam county, and is ancient and very infirm.

[1] _____ _____ _____ _____ _____ _____ _____ _____

[2]I further certify that no notification of the time and place of taking the said deposition was given to the adverse party ——, or *his* attorney, they being more than one hundred miles from the place of taking the same at the time aforesaid.

I further certify, that on the day and year first above mentioned I was attended by the said witness ——— ——— ——— ———, and thereupon the above deposition was taken and reduced to writing [3]by me, in the presence of said witness, and from his statements [4]by the said witness in my presence, and after carefully reading the same to the said witness, he subscribed his name

thereto as above written. I have retained the said deposition in my possession for the purpose of sealing up and directing the same, and after such sealing up and directing [5]——— ——— ——— ([6]placing the same in the post office, at the town of Cameron, to be forwarded by mail) to the clerk of the court for which the same was taken.

And I do further certify, that I am not of counsel or attorney for either of the parties in the said deposition or caption named, nor in any way interested in the event of the said cause or suit.

The passages marked 1, 4, and 5 were stricken out before signing.

Witness my hand and private seal as commissioner, at the town of Cameron, the day and year above written.

JAMES JEFFRIES, [SEAL.]
U. S. Commissioner, Dist.

The foregoing deposition is endorsed in words, to wit:

MIGUEL DAVILA vs. DAVID MUMFORD et als. } Deposition de bene esse of B. Bryant on the part of the defendants.

Hours in taking dep., 1 o'clock p. m.

Fee, $2 50.

Of ——— ——— commissioner.

The envelope is endorsed in words, to wit:

MIGUEL DAVILA vs. DAVID and JESSE MUMFORD et als.

Witness, B. Bryant.

(Postmark:) Cameron, Texas, Ap'l 7.

(Directed:) To the clerk of the District Court of the United States, Austin, Travis Co., Texas.

And the clerk's endorsement: Received from the post office and filed this 9th day of April, A. D. 1856.

W. P. DE NORMANDIE, *Clerk.*

(On the reverse of the envelope,) endorsed by P. M.: I received this package from James Jeffries to be forwarded by due course of mail this 5th day of April, A. D. 1856.

J. T. JEFFRIES, *P. M.*
For JAMES JEFFRIES, Jun'r,
Ass. P. M.

The commissioner's name across the seal, thus: James Jeffries, com'r.

And the clerk's endorsement of order of court opening the same, to wit: Opened in open court by order of court this 24th day of Nov., 1856.

W. P. DE NORMANDIE, *Cl'k.*

Note by the Clerk.

Note by the Clerk.—There does not appear (with the papers of the cause now in possession of the clerk) to have been returned by the commissioner any other paper, copy of interrogatories, commission, or affidavit, or order, except the deposition aforesaid; the original notice to Davila and his attorneys, filed Feb. 2d, 1856, with the clerk of this court, as appears by the (his) endorsement, and the original interrogatories filed as aforesaid with said notice, appears in the order of their filing and proceeding in the record, pages .

To the reading of which as evidence to the jury the plaintiff objected, on the ground that the same did not appear to have been authorized or taken by, or in conformity with, the statutes in such behalf made and provided. The defendants then proved by Garner, a witness in court, that the said deponent, Benjamin Bryant, was very infirm at the time of taking said deposition, and that he is since deceased, having remained infirm until his decease; whereupon the judge overruled the said objection, and permitted the said deposition to be read in evidence to the jury, to which opinion of the judge in overruling said objection, and in permitting said deposition to be read as aforesaid, the plaintiff then and there excepted.

It was admitted by the plaintiff that the defendants had regularly paid taxes on the two tracts of land to which they set up title in their said amended answers. The conflict between the tract of land claimed by plaintiff and those claimed by defendants was admitted by both parties, and the testimony on both sides being closed, and the above being all the facts given in evidence by the parties to this cause, the same after argument was submitted to the jury under the charge of the judge; whereupon the plaintiff then and there requested the judge in writing to give the following instructions to the jury, to wit:

Charge and Instructions requested by Plaintiff.

MIGUEL DAVILA vs. DAVID MUMFORD et al. } Charges requested by Pl'ff.

The presiding judge is requested to charge the jury:

1st. That the Spanish copy of the title to eleven leagues of land, under the seal of the general land office, and the translation thereof, also under the seal of the same, read by the plaintiff, connected with the admission contained in the respective answers of the said defendants, amount to sufficient evidence to establish the title of the pl'ff in the eleven leagues of land described in his petition, and the jury ought so to regard the same in the absence of any rebutting or adverse proof advanced by the defendants.

2d. That the several depositions read in evidence by the defend-

ants, nor either of them, ought to be considered by the jury in making up their verdict.

3d. That under the plea of three years' possession under the act of limitations contained in the respective answers of the defendants, no evidence is admissible of any matter which is only properly cognizable on the equity side of this court.

4th. That under the plea of five years' possession contained in each of said answers the testimonios offered in evidence by the def'ts are not to be considered by the jury.

5th. A second title obtained by the original grantee thereof when he had notice, either actual or constructive, of the existence of a prior title to the same land, in whatever manner perfected, is void, and a prior title deposited in the proper public office or archives is such notice.

6th. That under the defence of three years' possession the defendants cannot recover unless they show a title, or a color of title, under which they claim, fairly and in good faith, emanating or derived from the sovereignty of the soil, and no title, or color of title, can posses the requisite fairness and good faith where a prior title to the same land emanating from the same exists.

7th. That the testimonios under which the defendants claim are not deeds duly registered.

8th. That under their pleas of ten years' possession contained in the said answers the defendants cannot recover if it appears that they claim under title, or color of title, emanating from the government or sovereignty of the soil.

E. ALLEN,
For Pl'ff.

Endorsed thereon appears as follows:

I give the 1st, 3d, and 8th instructions above asked, and refuse the rest.—T. H. Duval, dist. judge, &c.

And the reverse of the above written instructions asked there is endorsed:

104. Miguel Davila vs. David Mumford et al.—Instructions to the jury requested by plaintiff.

And the clerk's filing, to wit:

Filed June 4th, 1857.—Matthew Hopkins, clerk.

But the judge gave only three, viz: the 1st, 3d, and 8th of said instructions to the jury, and refused to give the remainder, to wit: the 2d, 4th, 5th, 6th, and 7th of said instructions; and to his opinion in so refusing to give in charge to the jury the said last named and mentioned instructions, and each one of them, the plaintiff then and there excepted.

And the judge then and there further charged and instructed the jury, that "if the jury believe from the evidence before them

that the defendants, or either of them, had or held the actual adverse peaceable possession in their own right of the land respectively claimed by them for more than three years continuously next before the commencement of this suit, under color of title, and that the plaintiff's cause of action accrued more than three years before the commencement of this suit, then the jury will find for the defendant or defendants.

"And further, if the jury believe from the evidence that the defendants, or either of them, had or held the actual adverse peaceable possession in their own right of the land respectively claimed by them for more than three years continuously next before the commencement of this suit, under color of title, and that the plaintiff's cause of action accrued more than three years before the commencement of this suit, then the jury will find for the defendant or defendants.

"And further, if the jury believe from the evidence that the defendants, or either of them, have had and held the actual adverse and peaceable possession in their own right of the lands claimed by them respectively, cultivating, using, and enjoying the same, and paying tax thereon, and claiming the same under a deed or deeds, duly recorded for more than five years next before the commencement of this suit, and that the plaintiff's cause of action accrued more than five years before the commencement of such suit, then they will find a verdict for such defendant or defendants."

All which instructions were by the judge first reduced to writing, and are now on file among the papers of this cause.

And to these instructions last aforesaid, given to the jury as aforesaid by the judge, the plaintiff then and there excepted.

And thereupon the plaintiff, before the jury retired, presents this his bill of exceptions, and prays that the same be signed, sealed, allowed, and made a part of the record herein, by Allen and Hale, his atty's, which is accordingly done.

THO. H. DUVAL,
Dist. Judge Western Dist. of Texas.

Copy of Bond on Writ of Error.

And afterwards, to wit, on the fourteenth day of October, A. D. 1858, the plaintiff, Miguel Davila, by attorney, Allen and Hale, lodged in the clerk's office of the United States district court for the western district of Texas, at Austin, bond on writ of error, and copy of writ of error, and writ of error, and citation in error—the bond on writ of error being endorsed on the reverse—

MIGUEL DAVILA
vs.
DAVID MUMFORD et al. } No. 104. Law.

Bond on writ of error. Filed October 14th, 1858.
MATTHEW HOPKINS, *C'lk.*

And is in words, to wit:

Know all men by these presents that we, Miguel Davila, Edward Hanrick, and Thomas F. McKinney, are held and firmly bound unto David Mumford and Jesse Mumford in the full and just sum of three hundred dollars, to be paid to the said David Mumford and Jesse Mumford, their certain attorneys, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this the twenty- day of September, in the year of our Lord one thousand eight hundred and fifty-eight.

Whereas lately, at a term of the district court of the United States for the western district of Texas, held at Austin, in said district, in a suit depending in said court, between Miguel Davila, as plaintiff, and David Mumford, G. J. Graham, Peter Server, John Deleshamet, A. W. Sillivan, Peter Lower, Lewis Taylor, Beverly Pool, Hugh McKean, Pierson Carlile, J. J. Bangs, and Jesse Mumford, as defendants, a judgment was rendered against the said Miguel Davila, and in favor of said David Mumford and Jesse Mumford, who by the consent of all parties severed in their pleadings from the other defendants, and the said judgment being a final judgment so far as the said David Mumford and Jesse Mumford were concerned, and the said Miguel Davila having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the said judgment in the said suit, so far as said David Mumford and Jesse Mumford are concerned, and a citation directed to said David Mumford and Jesse Mumford, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of December next:

Now the condition of the above obligation is such, that if said Miguel Davila shall prosecute his said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, otherwise to remain in full force and virtue.

EDWARD HANRICK, [SEAL.]
Att'y for Miguel Davila.

EDW'D HANRICK, [SEAL.]
THO. F. McKINNEY. [SEAL.]

Sealed and delivered in presence of—
MATTHEW HOPKINS.

Approved by—

THO. H. DUVAL,
U. S. Dist. Judge Western Dist. of Texas.

Copy of Writ of Error.

The copy of writ of error is endorsed, to wit:

Plaintiff in Error, MIGUEL DAVILA,
vs.
Defendants in Error, DAVID and JESSE MUMFORD et al. } No. 104. Law.

In pursuance of statute of the United States.

Copy of writ of error. Allowed, copied, and filed 14th October, A. D. 1858.

MATTHEW HOPKINS,
Clerk.

And is in words, to wit:

UNITED STATES OF AMERICA.

The President of the United States to the honorable the Judge of the District Court of the United States for the western district of Texas, greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea, which is in said district court before you, at Austin, in said district, between Miguel Davila as plaintiff, and David Mumford, G. J. Graham, Peter Server, John Deleshamet, A. W. Sillavin, Peter Lower, Lewis Taylor, Beverly Pool, Hugh McKean, Pierson Carlile, J. J. Bangs, and Jesse Mumford, as defendants, in which the said defendants severed in their pleadings, and judgment was rendered in favor of David Mumford and Jesse Mumford (they having severed by consent of all parties) against the said Miguel Davila, as by his complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, this the fourteenth day of October, in the year of our Lord one thousand eight hundred and fifty-eight.

Allowed by—

THO. H. DUVAL,
U. S. Dist. Judge West. Dist. Texas.

In testo. whereof, I have hereunto set my hand and the impress of the seal of the court, at Austin, the day and year above written.

[SEAL.]

MATTHEW HOPKINS,
Clerk.

The citation in error is in words, to wit:

The copies of which served on the defendants in error were in words, to wit, endorsed, to wit:

MIGUEL DAVILA
vs.
DAVID MUMFORD and JESSE MUMFORD et als. } No. 104. Law.

Copy of citation in error, issued Oct. 14th, 1858.

MATTHEW HOPKINS,
Clerk.

And in words, to wit:

The United States of America to David Mumford and Jesse Mumford, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error, a copy of whereof is filed in the clerk's office of the district court of the United States for the western district of Texas, at Austin, wherein Miguel Davila is plaintiff, and you are defendants in error, to show cause, if any you can, why the judgment rendered in your favor against the said plaintiff in error, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thomas H. Duval, the judge of the district court of the United States for the western district of Texas, this fourteenth day of October, in the year of our Lord one thousand eight hundred and fifty-eight.

THO. H. DUVAL,
U. S. Dist. Judge Western Dist. of Texas.

To certify which, I have hereunto set my hand and the seal of court, at Austin, the day and date above written.

MATTHEW HOPKINS,
Clerk.

The returns of the marshal making the service on the original citation which accompanies this transcript is endorsed upon said citation in words, to wit:

Received the within citation in error this 30th day of October, 1858, to David Mumford and Jesse Mumford, from the clerk of the district court of the United States, at Austin, and executed the same by handing the within named David Mumford, one of the defendants in error named in said citation, a true and correct copy of this citation in error, furnished by the clerk of the aforesaid court, and under its seal, at home, in the county of Milam, on the 31st day of October, A. D. 1858.

WM. C. YOUNG,
U. S. M. W. D. T.
By WM. T. DAVIDSON,
U. S. Deputy Marshal.

Received the within citation in error this 8th day of November, A. D. 1858, to David Mumford and Jesse Mumford, from the clerk of the district court of the United States, at Austin, and executed the same by handing the within named Jesse Mumford, one of the defendants in error named in said citation, a true and correct copy of this citation in error, furnished by the clerk of the aforesaid court, and under its seal, at home, in the county of Robertson, on the 8th day of Nov., A. D. 1858.

WM. C. YOUNG,
U. S. M. W. D. T.
By L. H. CLARKE,
U. S. Deputy M. W. D. T.

UNITED STATES OF AMERICA.

District Court of the United States for the western district of Texas, holding sessions at Austin.

I, Matthew Hopkins, clerk of the district court of the United States for the western district of Texas, at Austin, certify the foregoing one hundred and fifteen pages to be a true and perfect transcript of the record and all the proceedings had in case No. 104, Law, wherein Miguel Davila is plaintiff, and David Mumford and Jesse Mumford and others are defendants.

In testimony whereof, I have hereunto set my hand and the impress of the seal of the court, at Austin, this 15th day of
[L. S.] November, A. D. 1858, and of the independence of the United States the eighty-third year.

MATTHEW HOPKINS,
Clerk.

Filed 29th November, 1858.